

United States
Court of Appeals
for the Ninth Circuit

PACIFIC GREYHOUND LINES, a corporation,
Appellant,

vs.

GEORGE RUMEH,
Appellee,

PACIFIC GREYHOUND LINES, a corporation,
Appellant,

vs.

BERTHA LUCILLE RHODES,
Appellee.

Transcript of Record **FILED**

JUN 9 - 1949

Appeals from the United States District Court
for the District of Arizona

PAUL P. O'BRIEN, CLERK

No. 12237

United States
Court of Appeals
for the Ninth Circuit

PACIFIC GREYHOUND LINES, a corporation,
Appellant,
vs.
GEORGE RUMEH,

Appellee,

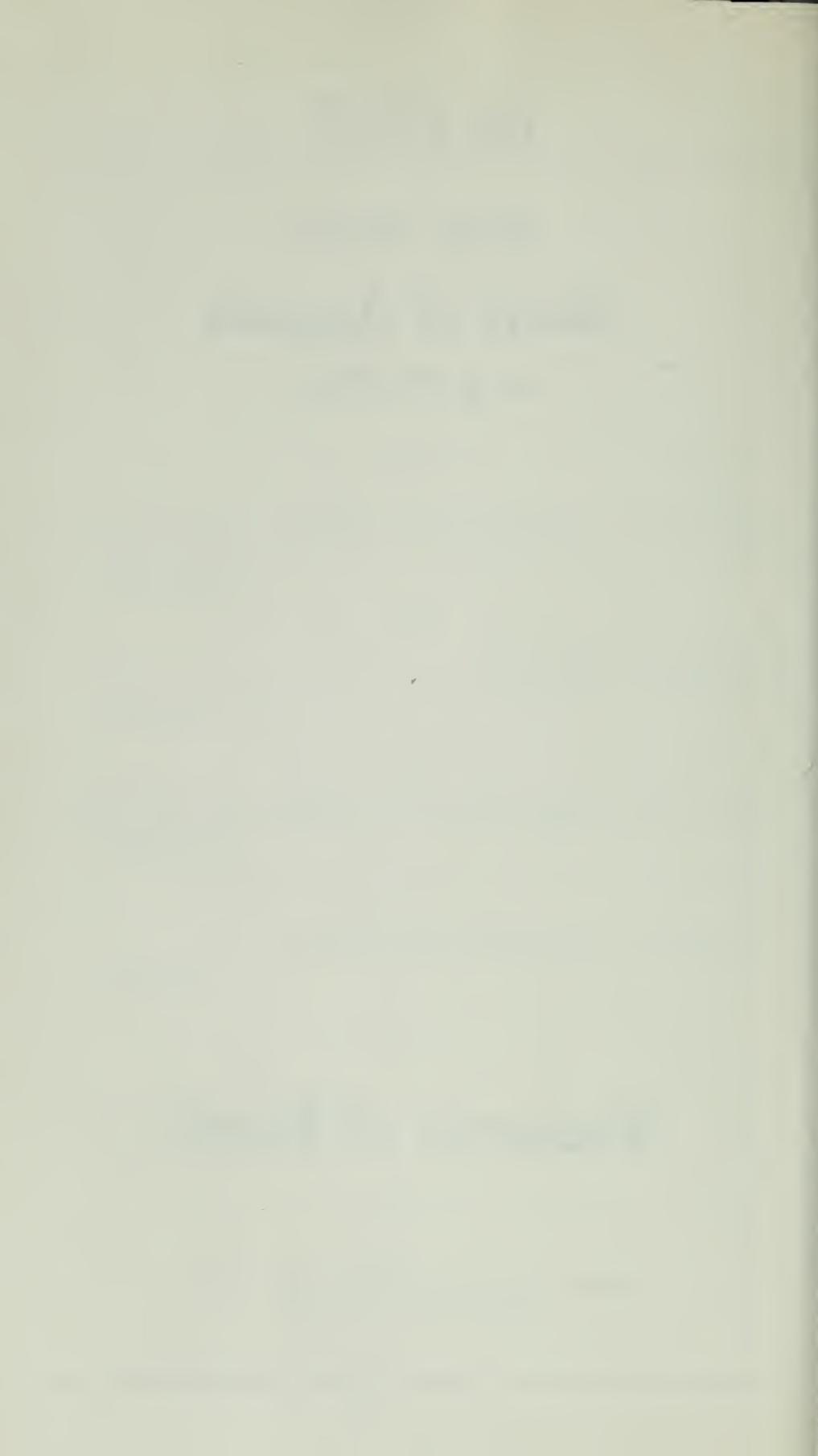
PACIFIC GREYHOUND LINES, a corporation,
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Transcript of Record

Appeals from the United States District Court
for the District of Arizona



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Pacific Greyhound Lines vs.

In the District Court of the United States
For the District of Arizona

No. Civ. 67—Globe

GEORGE RUMEH,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

FILINGS—PROCEEDINGS

* * * *

1947

Aug. 4—Defendant's Motion to Consolidate this Cause with Civil-426-Tucson on for hearing. Catlin present for pltf in Civil 426 Tucson and states that plaintiff acquiesces to deft's motion to consolidate and It Is Ordered that said motion be and it is granted and that cause numbered Civ.-426-Tucson be and it is set for trial on September 16, 1947, with Case No. Civ.-67-Globe.

* * * *

1948

Nov. 4—Enter further proceedings of trial. Jury instructed and retire to consider verdict at 10:28; at 3:30 p.m. all counsel pres. jury verdicts: \$21,000.00 for pltf. Rumeh and \$11,000.00 for pltf. Rhodes. Order clerk enter judgments according to the verdicts.

* * * *

1949

Mar. 31—Fwd copies of Notice of Appeal to counsel for pltf.

In the District Court of the United States
For the District of Arizona

No. Civ.-426-Tucson

BERTHA LUCILLE RHODES, Plaintiff,
vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

FILINGS—PROCEEDINGS

1947

July 8—File Record on Removal from Superior Court of Pima County: (Complaint: Summons and return thereon, Affidavit of Service by Mail, Notice of Petition for Removal, Petition for Removal of Cause to U. S. Dist. Court, Bond for Removal, Order for Removal, Minute Entry.) * * * *

1947

Aug. 4—Plaintiff's Motion for Trial Setting and Defendant's Motion to Consolidate this Cause with Cause No. 67-Globe on for hearing. Catlin present for plaintiff, no appearance by or on behalf of defendant. Said counsel for plaintiff states that plaintiff acquiesces to Defendant's Motion to Consolidate this case with Civ.-67-Globe and to the setting of this cause for trial on September 16, 1947, with Civ.-426-Tuc. Whereupon, It Is Ordered that defendant's Motion to Consolidate this cause with Civ.-67-Globe be and it is granted and it is further ordered that this case be set for trial September 16, 1947. * * * *

1948

Nov. 4—Enter judgment on the verdict for the plf.
Rhodes against the deft. in the sum of
\$11,000.00.

Nov. 4—Enter judgment in J. D.

* * * *

1949

Mar. 31—Fwd copy of Notice of Appeal to Messrs.
Hall, Catlin & Molloy, and to A. L. Carlton.

* * * *

In the District Court of the United States
For the District of Arizona

No. Civ.-67-Globe

GEORGE RUMEH,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

COMPLAINT

To the Honorable Judge of said Court:

Comes now George Rumeh, Plaintiff in the above-entitled and numbered case and for cause of action against the defendant, the Pacific Greyhound Lines, a corporation, alleges and shows the Court as follows:

I.

That this is an action at law between citizens of different states, and the amount in controversy in this suit, exclusive of interest and costs, exceeds the sum of Three Thousand (\$3,000.00) Dollars; that

Plaintiff, George Rumeh, is a citizen and resident of the State of Arizona, and resides in the City of Claypool, Gila County, Arizona, and the Defendant, the Pacific Greyhound Lines, is a corporation duly incorporated under the laws of the State of California, and is conducting the business of a common carrier, carrying passengers for hire in and through the State of Arizona; that said defendant has no statutory agent in Pima County, Arizona, upon whom service may be had.

II.

That on March 25, 1946, Plaintiff, George Rumeh, was a paid passenger on Defendant, Pacific Greyhound Lines bus from Miami, Arizona, to El Paso, Texas, said bus being operated by and under the exclusive control of Cody Bach, who was an employee and agent of said Defendant, and that while the said Defendant was so carrying the Plaintiff in said bus as a passenger and at about 6:10 o'clock p.m. on that date when it had reached a point about eight miles west of the City of Las Cruces, in Dona Ana County in the State of New Mexico, the said Defendant and its agent and employee, Cody Bach, did with such negligence and want of ordinary care run and operate and manage the said bus, so as to cause it to collide with an automobile approaching it from the opposite direction on said road in such a violent manner that Plaintiff was thrown through the windshield and front window of said bus and thereby suffered the injuries hereinafter alleged.

III.

That by reason of the aforesaid negligence of the Defendant, Pacific Greyhound Lines, and its agents

and employees, and the collision as heretofore alleged, and as a direct and proximate result thereof, the Plaintiff received numerous cuts, wounds, bruises and internal injuries to his head, neck, shoulders, arms, back, spine, chest, abdomen, hips, legs, and practically all parts of his body, of which he cannot give a more accurate description other than to say that they have been, and still are, the seats of constant pain; his right shoulder joint was fractured; his ribs were broken; the bridge of his nose was fractured; his scalp was badly cut and lacerated, and he received other cuts, bruises and lacerations too numerous to here mention in detail.

IV.

Prior to said injuries, Plaintiff had had pulmonary tuberculosis in his right lung which had been collapsed with artificial pneumothorax from 1930 to 1931, and the disease had become arrested and Plaintiff had been able to return to work and had worked and followed his occupation of operating a store since 1934, but as a direct and proximate result of the negligence of the said Defendant, Pacific Greyhound Lines, and its agents and employees and the said collision and the injuries he sustained therein, his tubercular condition was very much aggravated and the disease has been reactivated and he has been confined to his bed, and such condition will continue for a long period of time, if it is not permanent.

V.

That, as a result of the fracture of Plaintiff's right shoulder, as heretofore alleged, he has lost ninety per cent of the use of the shoulder joint, and such condition is permanent.

VI.

That, by reason of the said injuries, the Plaintiff has suffered great physical and mental pain and anguish, and that such suffering will continue in the future and be permanent.

VII.

That, by reason of the said injuries, he has been subjected to a violent shock and was thrown into a condition of chronic nervousness and made sick, sore and lame and disordered, including dizziness, headaches, backaches and insomnia, and his capacity to work and labor and for the enjoyment of life has been substantially and materially reduced and diminished, if not destroyed altogether, and such conditions will continue in the future and be permanent.

VIII.

That, by reason of the said injuries, the Plaintiff has been subjected to large expenses for medical attendance and surgical treatment, drugs and medicines, and for care and nursing in reasonable efforts to cure the results of said injuries, and he will necessarily be subjected to like charges for the same purpose in the future.

IX.

That plaintiff, at the time of said injuries, was thirty-nine years old, a married man with a wife and one child, six years old, wholly dependent upon him for support, and he had a life expectancy of approximately thirty years and had been able to work, and was working and earning from Twenty-five Hundred (\$2,500.00) Dollars to Three Thousand (\$3,000.00) Dollars per year.

X.

That, by reason of the foregoing injuries, the pain and suffering, past, present and future, the loss of earning capacity, past, present and future, and the medical expenses incurred and paid and to be incurred and paid in the future, Plaintiff has suffered damages in the sum of Ninety-five Thousand (\$95,000.00) Dollars.

Wherefore, Plaintiff prays that the Defendant, Pacific Greyhound Lines, be cited to appear and answer this Complaint, and that, after a full and final hearing thereon, he have judgment against the said Defendant for his damages in the sum of Ninety-five Thousand (\$95,000.00) Dollars, costs of this action, and all other and further relief, either at law or in equity, to which he may have shown himself justly entitled.

DAVID J. SMITH,
KRUCKER & FOWLER,

By /s/ SAMUEL H. FOWLER,
Attorneys for Plaintiff.

[Endorsed]: Filed Oct. 24, 1946.

[Title of District Court and Cause No. 67.]

ANSWER

Now comes the defendant above-named, by its attorneys, and for answer to plaintiff's complaint:

First Defense

For a First Defense to said complaint, defendant admits, denies and alleges as follows:

I.

Answering Paragraph I of the complaint, defendant admits the averments therein contained.

II.

Answering Paragraph II of the complaint, defendant admits that on or about March 25, 1946, the plaintiff was a paid passenger upon one of defendant's buses; that said bus was being operated by one Cody Bach who was an employee and agent of the defendant, but defendant denies that said bus was under the exclusive control of said Cody Bach; defendant admits that while the plaintiff was a passenger in said bus, and at the hour of about 6:00 o'clock p.m. on March 25, 1946, when said bus was at a point about 10 miles West of the City of Las Cruces, State of New Mexico, an automobile approaching from the opposite direction to that pursued by the bus violently collided with said bus; defendant denies generally and specifically each and every allegation in said Paragraph II of the complaint contained, save and except those hereinbefore expressly admitted.

III.

Answering Paragraph III of the complaint, defendant denies generally and specifically each and every allegation therein contained.

IV.

Answering Paragraph IV of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averment to the effect that prior to said collision plaintiff had had pulmonary tuberculosis in his

right lung and that the disease had become arrested, and that plaintiff had been able to return to work and had worked and followed his occupation of operating a store since 1934, and defendant requires strict proof of said averment; defendant denies that there was any negligence whatever on the part of the defendant, or any of its agents or employees, and defendant denies that the said collision and plaintiff's injuries, if any, were cause in any manner or form by any negligence on the part of the defendant, or any of its agents or employees; defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments to the effect that plaintiff's tubercular condition was aggravated by the said collision or that the disease had been reactivated or that plaintiff has been confined to his bed, or that such condition will continue for a long period of time, and defendant requires strict proof thereof; but defendant denies that such aggravation and reactivating of plaintiff's tubercular condition, or his confinement to bed, if such facts be true, were in any manner or form caused or brought on by any negligence on the part of defendant, or any of its agents or employees.

V.

Answering Paragraph V of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and requires strict proof thereof.

VI.

Answering Paragraph VI of plaintiff's complaint,

defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and requires strict proof thereof.

VII.

Answering Paragraph VII of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and requires strict proof thereof.

VIII.

Answering Paragraph VIII of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and requires strict proof thereof.

IX.

Answering Paragraph IX of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained and requires strict proof thereof.

X.

Answering Paragraph X of plaintiff's complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and requires strict proof thereof.

Second Defense

For a Second Defense to plaintiff's complaint, defendant alleges as follows:

That at the time and place of the accident and collision set forth in plaintiff's complaint, an emergency arose and confronted the driver of defendant's passenger bus and the said driver was placed in the position of and suddenly confronted by imminent peril in that while said driver was in a careful manner operating the bus containing passengers on the highway about 10 miles West of Las Cruces, New Mexico, and was proceeding in an easterly direction, the driver of an automobile which was not owned or controlled by the defendant, and which was proceeding westerly on said highway, approaching the bus, negligently, carelessly, suddenly and abruptly and without any signal or warning whatsoever, turned his said automobile from his right hand side of the highway to his left hand side of the highway and immediately in front of the bus and caused his said automobile to collide head-on with said bus; that the driver of said bus was then and there met with a sudden and immediate emergency and was suddenly and abruptly confronted with imminent peril endangering the lives and safety of the passengers in said bus, and said driver in said emergency, used his best judgment under the circumstances and used and exercised his best efforts to avoid the collision and to avoid injury to the said passengers and to others, and said emergency did not arise by and was not caused by the fault or negligence of the said driver

or of the said defendant, or of any of defendant's agents or employees.

Wherefore, defendant prays that plaintiff take nothing by his complaint, and that defendant recover its costs and expenses in this case expended or incurred.

BAKER & WHITNEY,
By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed] : Filed Nov. 19, 1946.

In the Superior Court of the State of Arizona,
In and For the County of Pima

No. 28681

BERTHA LUCILLE RHODES,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES,

Defendant.

COMPLAINT

Comes now the plaintiff and for her cause of action against the defendant, alleges:

I.

That the plaintiff is a resident of Pima County, State of Arizona and defendant is a duly organized

and registered foreign corporation and a common motor carrier of passengers, doing business in Pima County, State of Arizona.

II.

That on or about the 24th day of March, 1946, the plaintiff did purchase a ticket from the defendant bus line in Safford, Arizona, entitling her to passage from that city to Clovis, New Mexico. That she did board a bus of the defendant bus line pursuant thereto.

III.

That at approximately 6 p.m. of said day at a point approximately 15 miles from Las Cruces, New Mexico, in the direction of Deming, the driver of said bus, the agent of the defendant bus line, did negligently drive said bus into another automobile, the owner and occupants of which are unknown to the plaintiff.

IV.

That in said collision and as a direct and proximate result of said negligence upon the part of the defendant, two of the plaintiff's teeth were knocked out, her back and spinal column painfully injured and she was otherwise bruised and shaken.

V.

That the injuries so sustained by the plaintiff are severe and permanent and she has suffered severe and great pain and anguish therefrom and will continue so to suffer in the future. That she incurred and will incur expenses as a result of said injuries for medical care in excess of One Thousand (\$1,000.00) Dollars. That, also as a result of said

injuries, the plaintiff has been incapacitated from carrying on her household duties and has been forced to employ help to perform the same.

VI.

That as a result of said collision and the negligence of the defendant, certain of the plaintiff's personal belongings and luggage were lost. That these belongings were of the value of Fifty (\$50.00) Dollars.

Wherefore, plaintiff demands judgment against the defendant in the sum of Ten Thousand and Fifty (\$10,050.00) Dollars, and for her costs incurred herein.

WILLIAM G. HALL,
HAMILTON R. CATLIN,
JOHN F. MOLLOY,

By /s/ WM. G. HALL,
Attorneys for Plaintiff.

[Endorsed]: Filed June 5, 1947.

[Title of Superior Court and Cause No. 28681.]

State of Arizona,
County of Pima—ss.

I, Belle D. Hall, Clerk of the Superior Court of the State of Arizona, in and for the County of Pima, do hereby certify the above and foregoing to be a full, true and correct copy of the record, and the whole thereof in the above-entitled suit, heretofore pending in said Superior Court, being a suit numbered 28681, wherein Bertha Lucille Rhodes is plaintiff, and Pacific Greyhound Lines, a corporation, is defendant, said record consisting of the following:

1. Complaint, filed June 5, 1947;
2. Summons, and return thereon, filed June 10, 1947;
3. Affidavit of Service by Mail, filed June 24, 1947;
4. Notice of Petition for Removal, filed June 24, 1947;
5. Petition for Removal of Cause to the United States District Court, for the District of Arizona, filed June 24, 1947;
6. Bond for Removal, filed June 24, 1947;
7. Order for Removal, filed June 24, 1947;
8. Minute Entry.

In Testimony Whereof, I have hereunto set my hand and seal of said Superior Court, this 28th day of June, 1947.

/s/ BELLE D. HALL,
Clerk of the Superior Court of the State of Arizona,
in and for the County of Pima.

[Title of Superior Court and Cause No. 28681.]

ORDER FOR REMOVAL

This Cause, coming on for hearing upon the petition of Pacific Greyhound Lines, a corporation, defendant in the above-entitled action, for an order removing this cause to the District Court of the United States for the District of Arizona; and it appearing to this Court that the said defendant has filed his petition for such removal in due form and within the time required, and that said defendant has, with said petition, filed a bond for removal, duly conditioned as provided by law; and it appearing to the Court that the notice required by law of the filing of said bond and petition had, prior to the

filings thereof, been served upon the plaintiff herein, which said notice the Court finds was sufficient and in accordance with the requirements of the statute; and it appearing to this Court that this is a proper cause for removal to the said United States District Court for the District of Arizona;

This Court does hereby accept and approve said bond and said petition as good and sufficient and does order that this cause be, and the same is hereby removed to the District Court of the United States for the District of Arizona, and that no further proceedings be had in this cause in this Court, and the Clerk is hereby directed to make up the record in said cause for transmission to said District Court of the United States.

Dated this 24th day of June, 1947.

J. MERCER JOHNSON,
Judge.

[Endorsed]: Filed June 24, 1947.

In the District Court of the United States
for the District of Arizona

No. Civ. 426 Tucson

BERTHA LUCILLE RHODES,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a Corporation,
Defendant.

ANSWER

Now Comes the defendant, Pacific Greyhound Lines, a corporation, by its attorneys, and answering plaintiff's complaint filed herein:

For a First Defense

I.

Answering Paragraph I of the Complaint filed herein, defendant admits the truth of the averments therein contained.

II.

Answering Paragraph II of the Complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the averments therein contained, and requires strict proof thereof.

III.

Answering Paragraph III of the Complaint, defendant denies generally and specifically each and every allegation therein contained.

IV.

Answering Paragraph IV of the Complaint, de-

defendant denies generally and specifically, each and every allegation therein contained.

V.

Answering Paragraph V of the Complaint, defendant denies generally and specifically each and every allegation therein contained.

VI.

Answering Paragraph VI of the Complaint, defendant denies generally and specifically each and every allegation therein contained.

For a Second Defense

For a Second Defense to plaintiff's Complaint, defendant alleges as follows:

That at the time and place of the accident and collision set forth in plaintiff's complaint, an emergency arose and confronted the driver of defendant's passenger bus and the said driver was placed in the position of and suddenly confronted by imminent peril in that while said driver was in a careful manner operating the bus containing passengers on the highway about 10 miles West of Las Cruces, New Mexico, and was proceeding in an easterly direction, the driver of an automobile which was not owned or controlled by the defendant, and which was proceeding westerly on said highway, approaching the bus, negligently, carelessly, suddenly and abruptly and without any signal or warning whatsoever, turned his said automobile from his right hand side of the highway to his left hand side of the highway and immediately in front of the bus and caused his said auto-

mobile to collide head-on with said bus; that the driver of said bus was then and there met with a sudden and immediate emergency and was suddenly and abruptly confronted with imminent peril endangering the lives and safety of the passengers in said bus, and said driver in said emergency, used his best judgment under the circumstances and used and exercised his best efforts to avoid the collision and to avoid injury to the said passengers and to others, and said emergency did not arise by and was not caused by the fault or negligence of the said driver or of the said defendant, or of any of defendant's agents or employees.

Wherefore, defendant prays that plaintiff take nothing by her complaint, and that defendant recover its costs and expenses in this case expended or incurred.

BAKER & WHITNEY.

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed July 11, 1947.

In the District Court of the United States
for the District of Arizona

No. Civ. 67—Globe

GEORGE RUMEH,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a Corporation,
Defendant.

No. Civ. 426—Tucson

BERTHA LUCILLE RHODES,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a Corporation,
Defendant.

MOTION TO CONSOLIDATE CAUSES

Now Comes Pacific Greyhound Lines, defendant above named, by its attorneys, and moves the Court for an order consolidating the above actions for trial upon the ground and for the reason that the said actions arose out of the same accident and involved common questions of law and fact; the only difference between the actions being the parties plaintiff.

The said Cause No. Civ. 67—Globe, George Rumeh vs. Pacific Greyhound Lines, has been transferred to Tucson, and has been set for trial at Tucson on September 16, 1947; we therefore move that Cause No. Civ. 426—Tucson, Bertha Lucille Rhodes vs. Pacific Grey hound Lines, be consoli-

dated with said Rumeh case and be set for trial at the same time.

We submit this motion upon Statement of Points and Authorities pursuant to Rule 9, Rules of Practice of the United States District Court for the District of Arizona.

Dated at Phoenix, Arizona, this 22nd day of July, 1947.

BAKER & WHITNEY.

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

STATEMENT OF POINTS AND AUTHORITIES

Rule 42 of Rules of Civil Procedure for the District Courts of the United States, provides as follows:

"(a) Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay."

The above numbered and captioned causes arose by reason of and out of the same accident—an automobile collided with a bus of the defendant's in which the plaintiffs were passengers. The questions of law and fact in the two causes are identical. To separately try these actions would only result in

a great added expense to the defendant and a duplication of testimony.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed July 24, 1947.

[Title of District Court and Cause.]

MOTION FOR CONTINUANCE OF TRIAL

Now Comes the defendant above named by and through its attorneys, and moves the Court to postpone and continue the trial of the above causes for a reasonable time upon the ground and for the reason that there is a want of testimony in behalf of the defendant in that the defendant is unable to have present at the trial or to take the deposition of a material witness, a Mr. Alec C. Hood, whose permanent residence is 170 Greening Avenue, Las Cruces, New Mexico. That the testimony of such witness is material to the defense of the above causes and that the defendant has used due and proper diligence to procure such testimony and the testimony cannot be obtained from any other source. The postponement is not sought for delay only but that justice may be done.

The materiality of the evidence and the diligence exercised by the defendant is shown by the affidavit hereunto attached, marked Exhibit "A" and made a part hereof.

Dated at Phoenix, Arizona, this 27th day of October, 1948.

BAKER & WHITNEY.

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

[Title of District Court and Cause.]

AFFIDAVIT

State of Arizona,
County of Maricopa—ss.

Alexander B. Baker, being first duly sworn, deposes and says: That he is one of the attorneys for the defendant above named and makes this Affidavit for and on behalf of said defendant.

That the accident causing the injuries complained of in the Complaints filed in the above causes occurred on or about the 25th day of March, 1946, in the State of New Mexico. That the cases have been pending for a long period of time and any and all delays in trials have not been due to any fault on the part of the defendant. That on or about the 6th day of October, 1948, this affiant was first informed that the trial of the above cases would be had on November 1, 1948, in Tucson. That he immediately instituted investigation to determine the whereabouts of all material witnesses, including one Alec C. Hood. That affiant caused Subpoena to be issued to said Alec C. Hood and caused investigators to immediately try to contact him at his home in Las Cruces, New Mexico. That such investigators informed affiant that Witness Hood was in the State of Maine, but was expected to return to New Mexico in time for the trial. On yesterday, October 26, 1948, affiant was informed for the first time that said witness Alec C. Hood would not return to Arizona or New Mexico until Janu-

ary, 1949, and that at the present time he is in the State of Maine. That defendant has no means or process to procure the presence of said witness at the trial on November 1, and does not have sufficient time to take his deposition. That affiant is definitely assured that such witness will return to this jurisdiction in January or February, 1949.

That if said Alec C. Hood was called to testify as a witness in this case he would testify substantially as follows:

"My name is Alec C. Hood. I live at 170 Greening Ave., Las Cruces, New Mexico. I own and operate the Motor Service Garage in Las Cruces. On March 25th, 1946, at about 6:30 p.m., I received a telephone call from State Police to bring my wrecker to point 9 miles West of Las Cruces, on U. S. Highway No. 80 to the scene of an accident. I reached point of accident at about 6:50 p.m. It was still daylight and weather was clear. I first saw a Pacific Greyhound bus standing with left wheel about 8 feet south of south edge of black top pavement. The bus was headed due East and was parallel with highway. I saw that front end of bus was resting on top of a car later identified as being a Ford Coupe. The car was at a slight angle to the Southwest and right front of car was under front of bus and I could not raise bus with wrecker to get car out from under the bus. There were three occupants in Ford, a soldier and wife and a child about 7 or 8 years of age. The Highway Patrolman, Captain Salas, told me that all

occupants of Ford were dead. I examined tracks made by wheels of bus as it left the pavement on South side. I would estimate that the bus had left the pavement a distance of about 70 feet before it stopped. There were parts of Ford a distance I would estimate to be about $\frac{1}{2}$ length of bus to the rear and west, and I would assume that point of impact was where parts were found. There were no tracks or marks to indicate why Ford car apparently headed West was over on South shoulder of highway. The entire front end of the bus was out. The injured passengers from bus had all been taken to hospital when I reached the scene of the accident. A large truck with boom was used to lift up bus so that car could be pulled out.

ALEC C. HOOD."

That such testimony is material and essential to the proper defense of the above cases and cannot be obtained from any other source. That defendant has exercised every effort to obtain the presence of such witness at the trial and has used due diligence in that respect. The postponement of the trial is not sought for delay only but that justice may be done.

/s/ ALEXANDER B. BAKER.

Subscribed and sworn to before me this 27th day of October, 1948.

[Seal] /s/ DARRELL R. PARKER,
 Notary Public.

My Commission Expires: April 27, 1949.

NOTICE

To: George Rumeh and Bertha Lucille Rhodes, plaintiffs above named, and David J. Smith, and Krucker & Fowler, attorneys for plaintiff Rumeh; and Messrs. William G. Hall, Hamilton R. Catlin and John F. Molloy, attorneys for plaintiff Bertha Lucille Rhodes.

You Are Hereby Notified that the foregoing Motion for Continuance will be urged before the Court on Monday, November 1, 1948, at the hour of 10:00 o'clock a.m., or as soon thereafter as Counsel may be heard.

Dated at Phoenix, Arizona, this 27th day of October, 1948.

BAKER & WHITNEY.

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Oct. 28, 1948.

[Title of District Court and Cause No. 67.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiff, George Rumeh, and assess his damages at \$21,000.00.

/s/ F. W. HANNAH,
Foreman.

[Endorsed]: Filed Nov. 4, 1948.

[Title of District Court and Cause No. 426.]

VERDICT

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiff, Bertha Lucille Rhodes, and assess her damages at \$11,000.00.

/s/ F. W. HANNAH,
Foreman.

[Endorsed]: Filed Nov. 4, 1948.

[Title of District Court and Cause No. 67.]

MOTION FOR JUDGMENT FOR DEFENDANT NOTWITHSTANDING THE VERDICT AND FOR JUDGMENT IN ACCORDANCE WITH MOTION FOR DIRECTED VER- DICT; AND ALTERNATIVE MOTION FOR NEW TRIAL

Now Comes the defendant, by its attorneys, and pursuant to Rules 50 and 59, Rules of Civil Procedure for the District Courts of the United States, moves the Court for an order setting aside and vacating verdict and judgment rendered and entered in the above-captioned and numbered cause in favor of the plaintiff and directing the rendition and entry of judgment in favor of the defendant in accordance with the motion for directed verdict; and, in the alternative, for an order granting the defendant a new trial, for the following reasons and upon the following grounds:

I.

GROUNDS FOR JUDGMENT NOTWITHSTANDING THE VERDICT

1. The Court erred in denying defendant's motion for an instructed verdict in favor of the defendant made at the close of all the evidence and the Court should have granted such motion and should have directed the jury to return a verdict in favor of the defendant and the court should now render and enter judgment in favor of the defendant in accordance with motion for directed verdict and notwithstanding the verdict in favor of the plaintiffs.

2. The evidence is insufficient to sustain a cause of action in favor of the plaintiff and is insufficient to support the verdict or the judgment rendered in accordance with the verdict, and the verdict and the judgment are not justified by the evidence and are contrary to the evidence and the law.

II.

GROUNDS FOR NEW TRIAL

1. The Court erred in denying defendant's motion for an instructed verdict in favor of the defendant made at the close of the plaintiff's evidence.

2. That the Court erred in denying defendant's motion for an instructed verdict made at the close of all the evidence.

3. The evidence is insufficient to sustain a cause of action in favor of the plaintiff and is insuffi-

cient to support the verdict or judgment and the verdict and judgment are not justified by the evidence and are contrary to the evidence and to the law.

4. That the damages awarded plaintiff are excessive and appear to have been given under the influence of passion or prejudice.

5. That the verdict of the jury was influenced by passion or prejudice.

Wherefore, defendant prays that the verdict of the jury herein and the judgment rendered and entered thereon be set aside and vacated and a judgment be rendered and entered herein in favor of the defendant in accordance with Motion for Directed Verdict notwithstanding the Verdict, in favor of the plaintiff; and in the alternative, that the Court set aside said verdict and judgment in favor of the plaintiff and grant the defendant a new trial herein.

Dated at Phoenix, Arizona, this 13th day of November, 1948.

BAKER & WHITNEY,
By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

NOTICE OF HEARING MOTIONS

To the Clerk of the above-entitled Court, and to the plaintiff above named and his attorneys:

You Are Hereby Notified that the defendant requests oral argument of the Motions hereto attached and will make such oral argument before the Court

on Monday, the 22nd day of November, 1948, at the regular hearing of the motion calendar, or as soon thereafter as counsel can be heard.

Dated this 13th day of November, 1948.

BAKER & WHITNEY,
By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Cause No. 426]

MOTION FOR JUDGMENT FOR DEFENDANT NOTWITHSTANDING THE VERDICT AND FOR JUDGMENT IN ACCORDANCE WITH MOTION FOR DIRECTED VERDICT; AND ALTERNATIVE MOTION FOR NEW TRIAL

Now Comes the defendant, by its attorneys, and pursuant to Rules 50 and 59, Rules of Civil Procedure for the District Courts of the United States, moves the Court for an order setting aside and vacating verdict and judgment rendered and entered in the above captioned and numbered cause in favor of the plaintiff and directing the rendition and entry of judgment in favor of the defendant in accordance with the motion for directed verdict; and, in the alternative, for an order granting the defendant a new trial, for the following reasons and upon the following grounds:

I.

GROUNDS FOR JUDGMENT NOTWITH-
STANDING THE VERDICT

1. The Court erred in denying defendant's motion for an instructed verdict in favor of the defendant made at the close of all the evidence and the Court should have granted such motion and should have directed the jury to return a verdict in favor of the defendant and the court should now render and enter judgment in favor of the defendant in accordance with motion for directed verdict and notwithstanding the verdict in favor of the plaintiff.

2. The evidence is insufficient to sustain a cause of action in favor of the plaintiff and is insufficient to support the verdict or the judgment rendered in accordance with the verdict, and the verdict and the judgment are not justified by the evidence and are contrary to the evidence and the law.

II.

GROUNDS FOR NEW TRIAL

1. The Court erred in denying defendant's motion for an instructed verdict in favor of the defendant made at the close of the plaintiff's evidence.

2. That the Court erred in denying defendant's motion for an instructed verdict made at the close of all the evidence.

3. The evidence is insufficient to sustain a cause of action in favor of the plaintiff and is insufficient

to support the verdict or judgment and the verdict and judgment are not justified by the evidence and are contrary to the evidence and to the law.

4. That the damages awarded plaintiff are excessive and appear to have been given under the influence of passion or prejudice.

5. That the verdict of the jury was influenced by passion or prejudice.

Wherefore, defendant prays that the verdict of the jury herein and the judgment rendered and entered thereon be set aside and vacated and a judgment be rendered and entered herein in favor of the defendant in accordance with Motion for Directed Verdict Notwithstanding the Verdict, in favor of the plaintiff; and in the alternative, that the Court set aside said verdict and judgment in favor of the plaintiff and grant the defendant a new trial herein.

Dated at Phoenix, Arizona, this 13th day of November, 1948.

BAKER & WHITNEY,
By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

NOTICE OF HEARING MOTIONS

To the Clerk of the above-entitled Court, and to the plaintiff above named and her attorneys:

You Are Hereby Notified that the defendant requests oral argument of the Motions hereto attached and will make such oral argument before the Court on Monday, the 22nd day of November, 1948, at

the regular hearing of the motion calendar, or as soon thereafter as counsel can be heard.

Dated this 13th day of November, 1948.

BAKER & WHITNEY.

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed Nov. 15, 1948.

[Title of District Court and Causes Nos. 67-426.]

STIPULATION

It Is Hereby Stipulated by and between attorneys for plaintiffs and defendant above named that Defendant's Motions for Judgment Notwithstanding the Verdicts and Motion for New Trial in each and both of the above cases shall be and are hereby submitted to the Court upon briefs and memoranda and shall be and are hereby deemed taken under advisement by the Court. The defendant has already submitted Memorandum of Points and Authorities in support of its Motions, but it is hereby granted the period of fifteen days from this date to submit additional memoranda. The plaintiffs shall have fifteen days thereafter within which to submit answering briefs or memoranda and the defendant shall have ten days thereafter within which to reply to the same. It is further stipulated and agreed that the

Court may render its order upon said motions from the State of California.

Dated this 2nd day of December, 1948.

DAVID J. SMITH,

KRUCKER & FOWLER,

By /s/ SAMUEL H. FOWLER,

Attorneys for Plaintiff Rumeh.

HALL, CATLIN & MOLLOY,

By /s/ WILLIAM G. HALL,

Attorneys for Plaintiff Rhodes.

BAKER & WHITNEY,

By /s/ ALEXANDER B. BAKER,

Attorneys for Defendant.

[Endorsed]: Filed Dec. 8, 1948.

In the District Court of the United States
for the District of Arizona

No. Civ. 67—Globe

GEORGE RUMEH,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

ORDER DENYING MOTIONS

The plaintiff above named brought his action against the above-named defendant for damages for personal injuries alleged to have been sustained by him in a collision between defendant's bus, in which

he was then riding as a paid passenger, and another motor vehicle, on a public highway in the vicinity of Las Cruces, New Mexico, on or about March 25, 1946, which collision was alleged to have been caused by the defendant's negligent operation of said bus.

Another plaintiff, Bertha Lucille Rhodes, also a passenger in the same bus, brought her separate action in cause No. Civ. 426-Tucson, for damages for personal injuries alleged to have been similarly sustained by her in said collision.

The respective causes of action having arisen out of the same accident, and the defendant being the same in each case, the actions were consolidated for trial and were tried together to a jury.

The jury rendered a separate verdict in each case, in favor of each plaintiff and against said defendant and judgment was entered thereon in each case, to-wit, in the sum of \$11,000.00 in favor of Bertha Lucille Rhodes, and in the sum of \$21,000.00 in favor of George Rumeh.

The defendant in the above-entitled cause has filed a motion to set aside and vacate the verdict and judgment above mentioned in favor of George Rumeh and against said defendant and that judgment be rendered and entered herein in favor of defendant in accordance with defendant's motion for a directed verdict notwithstanding the verdict in favor of the plaintiff; and in the alternative that the court set aside the verdict and judgment and grant a new trial to defendant.

Similar motions have been filed in the case of Ber-

tha Lucille Rhodes, vs. Pacific Greyhound Lines by said defendant.

Separate similar rulings are made by the court in each case.

The defendant as to its grounds for said motion for judgment notwithstanding the verdict sets out that the evidence is insufficient to sustain plaintiff's cause of action and to support said verdict or the judgment, and the verdict and judgment are not justified by the evidence and are contrary to the evidence and the law.

In the defendant's alternative motion for a new trial, the defendant, in addition to the above grounds, sets out that the court erred in denying defendant's motion for an instructed verdict made at the close of all of the evidence; that the damages awarded plaintiff are excessive and appear to have been given under the influence of passion or prejudice.

Though counsel for all parties have been most industrious in their presentation of briefs and data relating to the motions herein considered, we find but little new or additional therein which was not argued during the trial of the case.

A qualified jury heard the evidence from the lips of several witnesses who testified in the case, and we will not attempt here to analyze such evidence.

We conclude now, as we concluded at the trial that there was ample evidence to go to the jury on the question of the negligence of the defendant and on all other issues of the case.

In our opinion the evidence was sufficient to sustain the verdict and judgment herein and such ver-

dict and judgment are justified by the evidence; the verdict rendered herein was not excessive nor given under the influence of passion or prejudice.

All of the motions of the defendant are hereby denied.

Dated this 2nd day of March, 1949.

/s/ JACOB WEINBERGER,
United States District Judge.

[Endorsed]: Filed March 7, 1949.

In the District Court of the United States
for the District of Arizona

No. Civ. 426—Tucson

BERTHA LUCILLE RHODES,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

ORDER DENYING MOTIONS

The plaintiff above named brought her action against the above-named defendant for damages for personal injuries alleged to have been sustained by her in a collision between defendant's bus, in which she was then riding as a paid passenger, and another motor vehicle, on a public highway in the vicinity of Las Cruces, New Mexico, on or about March 25, 1946, which collision was alleged to have been caused by the defendant's negligent operation of said bus.

Another plaintiff, George Rumeh, also a passenger

in the same bus, brought his separate action in cause No. Civ. 67, *Globe*, for damages for personal injuries alleged to have been similarly sustained by him in said collision.

The respective causes of action having arisen out of the same accident, and the defendant being the same in each case, the actions were consolidated for trial and were tried together to a jury.

The jury rendered a separate verdict in each case, in favor of each plaintiff and against said defendant and judgment was entered thereon in each case, to-wit, in the sum of \$11,000.00 in favor of Bertha Lucille Rhodes, and in the sum of \$21,000.00 in favor of George Rumeh.

The defendant in the above-entitled cause has filed a motion to set aside and vacate the verdict and judgment above mentioned in favor of Bertha Lucille Rhodes and against said defendant and that judgment be rendered and entered herein in favor of defendant in accordance with defendant's motion for a directed verdict notwithstanding the verdict in favor of the plaintiff; and in the alternative that the court set aside the verdict and judgment and grant a new trial to defendant.

Similar motions have been filed in the case of *George Rumeh vs. Pacific Greyhound Lines* by said defendant.

Separate similar rulings are made by the Court in each case.

The defendant as to its grounds for said motion for judgment notwithstanding the verdict sets out that the evidence is insufficient to sustain plaintiff's cause of action and to support said verdict or the judgment, and that the verdict and judgment are not justified by the evidence and are contrary to the evidence and the law.

In the defendant's alternative motion for a new trial, the defendant, in addition to the above grounds, sets out that the court erred in denying defendant's motion for an instructed verdict made at the close of all of the evidence; that the damages awarded plaintiff are excessive and appear to have been given under the influence of passion or prejudice.

Though counsel for all parties have been most industrious in their presentation of briefs and data relating to the motions herein considered, we find but little new or additional therein which was not argued during the trial of this case.

A qualified jury heard the evidence from the lips of several witnesses who testified in the case, and we will not attempt here to analyze such evidence.

We conclude now, as we concluded at the trial that there was ample evidence to go to the jury on the question of the negligence of the defendant and on all other issues of the case.

In our opinion the evidence was sufficient to sustain the verdict and judgment herein and such verdict and judgment are justified by the evidence; the

verdict rendered herein was not excessive nor given under the influence of passion or prejudice.

All of the motions of the defendant are hereby denied.

Dated this 2nd day of March, 1949.

/s/ JACOB WEINBERGER,
United States District Judge.

[Endorsed]: Filed March 7, 1949.

[Title of District Court and Cause No. 67.]

SUPERSEDEAS AND COST BOND

Know All Men by These Presents:

That we, Pacific Greyhound Lines, a corporation, defendant above named, as principal, and Indemnity Insurance Company of North America, a Pennsylvania corporation, as surety, are held and firmly bound unto George Rumeh, plaintiff above named, in the full and just sum of Twenty-five Thousand (\$25,000.00) Dollars, to be paid to the said George Rumeh, his certain attorneys, heirs, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 25th day of March, 1949.

Whereas, lately in the District Court of the United States for the District of Arizona, in a suit depending in said court, between George Rumeh, as plaintiff, and Pacific Greyhound Lines, a corporation, as defendant, a judgment was rendered and entered in

favor of said plaintiff and against the said defendant, Pacific Greyhound Lines, and thereafter said court did render and enter an order denying said defendant's "Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial"; and the said defendant, Pacific Greyhound Lines, having filed in said Court a notice of Appeal to the United States Court of Appeals for the Ninth Circuit from said judgment and order.

Now, the condition of the above obligation is such that if the said Pacific Greyhound Lines, defendant above named, shall prosecute its said appeal to effect and satisfy said judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment affirmed, and shall satisfy in full such modification of the judgment and such costs, interest and damages the appellate court may award if the judgment be modified, then the above obligation to be void; otherwise to remain in full force and effect.

(Seal) PACIFIC GREYHOUND LINES,
a corporation,

By /s/ DAVID GRANT,
Secretary, Principal.

(Seal) INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA, a Pennsylvania
corporation,

By /s/ ALLEN LUHN,
Attorney-in-Fact, Surety.

State of California,
County of San Francisco—ss.

On this 25th day of March, in the year one thousand nine hundred and forty-nine, before me, Abraham Greenbaum, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly, commissioned and sworn, personally appeared David Grant known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this certificate first above written.

(Seal) /s/ ABRAHAM GREENBAUM,
Notary Public in and for the City and County of San
Francisco, State of California.

My Commission Expires December 15, 1952.

The foregoing bond and surety approved, and when filed it shall operate as a supersedeas.

/s/ DAVID W. LING.
United States District Judge.

[Endorsed]: Filed March 29, 1949.

[Title of District Court and Cause No. 426.]

SUPERSEDEAS AND COST BOND

Know All Men by These Presents:

That we, Pacific Greyhound Lines, a corporation, defendant above named, as principal, and Indemnity Insurance Company of North America, a Pennsylvania corporation, as surety, are held and firmly bound unto Bertha Lucille Rhodes, plaintiff above named, in the full and just sum of Fifteen Thousand (\$15,000.00) Dollars, to be paid to the said Bertha Lucille Rhodes, her certain attorneys, heirs, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 25th day of March, 1949.

Whereas, lately in the District Court of the United States for the District of Arizona, in a suit depending in said court, between Bertha Lucille Rhodes, as plaintiff, and Pacific Greyhound Lines, a corporation, as defendant, a judgment was rendered and entered in favor of said plaintiff and against the said defendant, Pacific Greyhound Lines, and thereafter said court did render and enter an order denying said defendant's "Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial"; and the said defendant, Pacific Greyhound Lines, having filed in said Court a notice of Appeal to the United States

Court of Appeals for the Ninth Circuit from said judgment and order.

Now, the condition of the above obligation is such that if the said Pacific Greyhound Lines, defendant above named, shall prosecute its said appeal to effect and satisfy said judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or the judgment affirmed, and shall satisfy in full such modification of the judgment and such costs, interest and damages the appellate court may award if the judgment be modified, then the above obligation to be void; otherwise to remain in full force and effect.

(Seal) PACIFIC GREYHOUND LINES,
a corporation,

By /s/ DAVID GRANT,
Secretary, Principal.

(Seal) INDEMNITY INSURANCE COMPANY
OF NORTH AMERICA, a Pennsylvania
corporation,

By /s/ ALLEN LUHN,
Attorney-in-Fact, Surety.

State of California,
County of San Francisco—ss.

On this 25th day of March, in the year one thousand nine hundred and forty-nine, before me, Abraham Greenbaum, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared David Grant, known to me to be

the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof I have hereunto set my hand and affixed my official seal in the City and County of San Francisco the day and year in this certificate first above written.

(Seal) /s/ ABRAHAM GREENBAUM,
Notary Public in and for the City and County of San
Francisco, State of California.

My Commission Expires December 15, 1952.

The foregoing bond and surety approved, and when filed it shall operate as a supersedeas.

/s/ DAVID W. LING,
United States District Judge.

[Endorsed]: Filed March 29, 1949.

[Title of District Court and Cause No. 67.]

NOTICE OF APPEAL

Notice Is Hereby Given that Pacific Greyhound Lines, a corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on or about the 4th day of November, 1948, and from the order denying defendant's "Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial" entered in this action on or

about the 7th day of March, 1949, and from the whole and all of said judgment and order.

Dated at Phoenix, Arizona, this 30th day of March, 1949.

BAKER & WHITNEY,

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

[Endorsed]: Filed March 31, 1949.

[Title of District Court and Cause No. 426.]

NOTICE OF APPEAL

Notice Is Hereby Given that Pacific Greyhound Lines, a corporation, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in this action on or about the 4th day of November, 1948, and from the order denying defendant's "Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial" entered in this action on or about the 7th day of March, 1949, and from the whole and all of said judgment and order.

Dated at Phoenix, Arizona, this 30th day of March, 1949.

BAKER & WHITNEY,

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

[Endorsed]: Filed March 31, 1949.

[Title of District Court and Causes Nos. 67-426.]

DESIGNATION OF RECORD AND PROCEEDINGS TO BE CONTAINED IN RECORD ON APPEAL

To: Wm. H. Loveless, Clerk of the above Court, and Messrs. David J. Smith, A. L. Carlton, and Krucker & Fowler, attorneys for plaintiff George Rumeh, and Messrs. Hall, Catlin & Molloy, Attorneys for plaintiff, Bertha Lucille Rhodes:

Now Comes Pacific Greyhound Lines, a corporation, defendant above named, by its attorneys, and designates the following records and proceedings in the above causes to be contained in the record on appeal:

All pleadings, evidence, depositions, testimony, exhibits, minutes, documents, papers, records and proceedings filed or had in the above actions, including this designation and all notices, orders, papers and proceedings hereinafter entered, filed or had in these actions in this court.

There is filed herewith two copies of the Reporter's Transcript of the Evidence.

Dated at Phoenix, Arizona, this 31st day of March, 1949.

BAKER & WHITNEY,

By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

(Affidavit of Service by Mail attached.)

[Endorsed]: Filed April 1, 1949.

[Title of District Court and Causes Nos. 67-426.]

**STIPULATION FOR CONSOLIDATION
OF RECORD**

It Is Hereby Stipulated and Agreed by and between attorneys for plaintiffs and defendant above named, that for the purposes of appeal, the records shall be consolidated, as they were consolidated for trial in the District Court, and it shall be necessary to file only one notice to the Clerk of papers and records required on appeal, and one copy of all other papers, notices and documents necessary to effect the appeal or complete the record, all of which shall be deemed filed in each of the above cases, and it shall be necessary for the Clerk of the said United States District Court to transmit to the Clerk of the United States Court of Appeals for the Ninth Circuit only one record, which shall include all records, papers and proceedings of each of the above two cases, and the causes may be docketed in the said United States Court of Appeals as consolidated, and all proceedings thereafter in the said United States Court of Appeals shall be conducted as a consolidated cause.

Dated this 30th day of March, 1949.

DAVID J. SMITH,

A. L. CARLTON,

KRUCKER & FOWLER,

/s/ HERBERT Y. KRUCKER,

HALL, CATLIN & MOLLOY,

By /s/ WILLIAM G. HALL,

Attorneys for Plaintiffs, Bertha Lucille Rhodes and George Rumeh.

BAKER & WHITNEY,
By /s/ ALEXANDER B. BAKER,
Attorneys for Defendant.

[Endorsed]: Filed April 4, 1949.

In the United States District Court
for the District of Arizona

MINUTE ENTRY OF MONDAY, AUG. 4, 1947

(Globe Division)

May, 1947, Term. At Tucson.

Honorable Howard C. Speakman, United States
District Judge, Presiding.

[Title of Cause No. 67.]

Defendant's Motion to Consolidate this Cause with
Civ-426-Tucson comes on regularly for hearing.

Hamilton R. Catlin, Esquire, appears on behalf of
the plaintiff in Civ-426-Tucson. No appearance is
made by or on behalf of any other parties. Said coun-
sel for the plaintiff in Civ-426-Tucson states that the
plaintiff in said cause is acquiescent to defendant's
motion to consolidate this cause with Civ-426- Tucson,
and

It Is Ordered that this cause be consolidated with
Civ-426-Tucson and be and it is set for trial on Sep-
tember 16, 1947.

In the United States District Court
for the District of ArizonaMINUTE ENTRY OF MONDAY, AUG. 4, 1947
(Tucson Division)

May, 1947, Term. At Tucson.

Honorable Howard C. Speakman, United States
District Judge, Presiding.

[Title of Cause No. 426.]

Plaintiff's Motion for Trial Setting and Defendant's Motion to Consolidate this Cause with Cause No. Civil-67-Globe come on regularly for hearing this day.

Hamilton R. Catlin, Esquire, is present for the plaintiff. No appearance is made on behalf of the defendant.

Said counsel for the plaintiff states to the Court that plaintiff acquiesces to defendants Motion to Consolidate this Cause with Cause No. Civil-67-Globe; whereupon,

It Is Ordered that said Motion to Consolidate this Cause with Cause No. Civil-67-Globe be and it is granted, and

It Is Further Ordered that this case be set for trial September 16, 1947.

In the United States District Court for the
District of Arizona

MINUTE ENTRY OF MONDAY, NOV. 1, 1948

November, 1948, Term, at Tucson.

Honorable Jacob Weinberger, United States Dis-
trict Judge, Specially Assigned, Presiding.

[Title of Causes Nos. 67-426.]

These cases come on regularly for trial this day. William G. Hall, Esquire, and Samuel Fowler, Esquire, appear as counsel for the plaintiffs. Alex Baker, Esquire, appears as counsel for the defendant. On motion of Samuel Fowler, Esquire,

It Is Ordered that A. L. Carlton be entered as associate counsel for the plaintiffs.

Alex Weiss is present as official reporter.

Counsel for the plaintiffs announce ready for trial.

Counsel for the defendant now urges Defendant's Motion for Continuance heretofore filed.

Said Motion is resisted by counsel for the plain-tiffs.

It Is Ordered that Defendant's Motion for Con-tinuance be and it is denied.

And thereupon, at the hour of 11:05 o'clock a.m., It Is Ordered that the further trial of these cases be continued until 3:00 o'clock p.m., this date, to which time all jurors in attendance, the parties and counsel are excused.

Subsequently, at the hour of 3:00 o'clock p.m., all jurors, parties and their respective counsel be-

ing present pursuant to recess, further proceedings of trial are had as follows:

It Is Ordered that Defendants' Motion for continuance be and it is denied.

On stipulation of counsel, It Is Ordered that the record show that these cases are consolidated for trial.

A lawful jury of 12 persons is now duly empaneled and sworn to try these cases.

On stipulation of counsel, It Is Ordered that an alternate juror be empaneled herein and that each side may be allowed one peremptory challenge.

Thereupon, an alternate juror is now duly empaneled and sworn to try these cases.

It Is Ordered that the jurors not empaneled in the trial of these cases be and they are excused until further order.

Samuel Fowler, Esq., now reads the complaint in Civ-67 Globe, to the Jury and Alex Baker, Esq., now reads the answer thereto. William G. Hall, Esq., now reads the complaint in Civ-426 Tucson, to the Jury and Alex Baker, Esq., now reads the answer thereto.

A. L. Carlton, Esq., now makes the opening statement to the jury and Alex Baker, Esq., reserves his statement on behalf of the defendant.

Plaintiffs' Case

A. D. Long is now duly sworn and examined on behalf of the plaintiffs.

The following Plaintiffs' Exhibits are now admitted in evidence: 1. X-Ray; 2. X-Ray; 3. X-Ray.

And thereupon, at the hour of 5:10 o'clock p.m., It Is Ordered that the further trial of these cases be continued until 10:00 o'clock a.m., November 2, 1948, to which time the Jury being first duly admonished by the Court, the parties and counsel are excused.

In the United States District Court for the
District of Arizona

MINUTE ENTRY OF TUESDAY, NOV. 2, 1948

November, 1948, Term, at Tucson.

Honorable Jacob Weinberger, United States District Judge, Specially Assigned, Presiding.

[Title of Causes Nos. 67-426.]

The Jury and all members thereof, the parties and respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Counsel for the plaintiffs now calls Cody Bach for cross-examination as an adverse party.

Counsel for the defendant objects, and said objection is sustained.

Viola B. Tuck is now duly sworn and examined on behalf of the plaintiffs.

Plaintiffs' Exhibit 4, Time Table, is now admitted in evidence.

The following Defendants' Exhibits are now admitted in evidence: Ex. B, Photograph; Ex. C, Photograph; Ex. D, Photograph; Ex. A, Photograph.

C. G. Salas is now duly sworn and examined on behalf of the plaintiffs.

Plaintiffs' Exhibit 5, Photograph, is now admitted in evidence.

Howard Jones is now duly sworn and examined on behalf of the plaintiffs.

And thereupon, at the hour of 12:10 o'clock p.m., It Is Ordered that the further trial of this case be continued until 1:45 o'clock p.m., to which time the Jury, being first duly admonished by the Court, the parties and counsel are excused.

Subsequently, at the hour of 1:45 o'clock p.m., the Jury and all members thereof, the parties and their respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Howard Jones, heretofore sworn, is now recalled and further examined on behalf of the plaintiffs.

Dr. N. K. Thomas is now duly sworn and examined on behalf of the plaintiffs.

The following Plaintiffs' exhibits are now admitted in evidence: Ex. 6, X-Ray; Ex. 7, X-Ray: Ex. 8, X-Ray.

Dr. Albert L. Sechrist is now duly sworn and examined on behalf of the plaintiffs.

Bertha Lucille Rhodes is now duly sworn and examined on behalf of the plaintiffs.

George Rumeh is now duly sworn and examined on behalf of the plaintiffs.

And thereupon, at the hour of 3:30 o'clock p.m., It Is Ordered that the further trial of these cases

be continued until 10:00 o'clock a.m., Wednesday, November 3, 1948, to which time the Jury being first duly admonished by the Court, the parties and counsel are excused.

In the United States District Court for the
District of Arizona

MINUTE ENTRY OF WEDNESDAY,
NOV. 3, 1948

November, 1948, Term, at Tucson.

Honorable Jacob Weinberger, United States District Judge, Specially Assigned, Presiding.

[Title of Causes Nos. 67-426.]

The Jury and all members thereof, the parties and respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Plaintiffs' Case Continued:

Plaintiff, George Rumeh, heretofore sworn, is now recalled and further examined on behalf of the plaintiffs.

Howard Jones, hertofore sworn, is now recalled and further examined on behalf of the plaintiffs.

C. G. Salas, heretofore sworn, is now recalled and further examined on behalf of the plaintiffs.

Whereupon, the Plaintiffs rest.

At 11:05 o'clock a.m., the Jury being first duly admonished, is excused from the Court Room until further order.

Counsel for the defendant now moves Court to

direct a verdict in favor of the defendant in each of causes consolidated for trial, and states his grounds therefor. Said Motion is now duly argued by respective counsel.

It Is Ordered that defendant's Motion for a Directed Verdict be and it is denied, in each of these cases.

At 11:55 o'clock a.m., the jury is recalled and all members thereof are present. Counsel now stipulate that henceforth it will be sufficient only to remind the Jury of Court's admonition.

And thereupon, at the hour of 11:58 o'clock a.m., It Is Ordered that the further trial of this case be continued to 1:45 o'clock p.m., to which time the jury, being first duly admonished by the Court, the parties and counsel are excused.

Subsequently, at the hour of 2:20 o'clock p.m., the jury and all members thereof, the parties and respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Alex Baker, Esq., now states the defendant's case to the Jury.

Defendant's Case:

William M. Boone, Jr., is now duly sworn and examined on behalf of the defendant.

Cody Bach is now duly sworn and examined on behalf of the defendant.

Whereupon, the defendant rests.

Both sides rest.

At 3:25 o'clock p.m., the Jury being duly admonished, is now excluded from the Court Room.

Whereupon, the Court and counsel retire to Chambers, and the following proceedings are had, in the absence of the Jury:

Respective counsel state they have no objections to the Court's proposed instructions.

Said counsel for the defendant now renews Motion for a Directed Verdict on the same grounds as stated at the time original motion was made.

It Is Ordered that said Motion be and it is denied.

At 3:45 o'clock p.m., the Jury and all members, the parties and their respective counsel are present in open Court and further proceedings of trial are had as follows:

William G. Hall, Esquire, counsel for the plaintiff, Bertha Lucille Rhodes, now states to the Jury that the plaintiff has moved to amend the prayer of her complaint in Civ-426 Tucson, and that the approval of the Court on said amendment has been granted, and said prayer, as amended, is now read to the Jury by said counsel, as follows: "Wherefore plaintiff demands judgment against the defendant in the sum of \$25,050, and for her costs incurred herein."

All the evidence being in, the case is now argued by respective counsel to the Jury.

And thereupon, at the hour of 5:45 o'clock p.m.,

It Is Ordered that the further trial of these cases be continued until Thursday, November 4, 1948, at 10:00 o'clock a.m., to which time the Jury, being first duly admonished by the Court, the parties and counsel are excused.

In the United States District Court for the
District of Arizona

MINUTE ENTRY OF THURSDAY, NOV. 4, 1948

November, 1948, Term, at Tucson.

Honorable Jacob Weinberger, United States District Judge, Specially Assigned, Presiding.

[Title of Causes Nos. 67-426.]

The Jury and all members thereof, the parties and respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Whereupon, the Court duly instructs the Jury.

It Is Ordered that Lee Adamson, alternate juror, be and he is excused from further attendance in this case.

The Jury now retire at the hour of 10:28 o'clock a.m. in charge of a sworn bailiff to consider of their verdicts.

Subsequently, at the hour of 12:10 o'clock p.m., the Jury having so requested, It Is Ordered that the bailiff escort the Jury to lunch.

And subsequently, at 3:30 o'clock p.m., the Plain-

tiff, George Rumeh, and all counsel being present, the Jury return in a body into Open Court and all members thereof being present are asked if they have agreed upon verdicts. Whereupon, the Foreman reports that they have agreed and presents the following verdicts, to-wit:

“GEORGE RUMEH,

Plaintiff,

Against

PACIFIC GREYHOUND LINES, a Corporation,
Defendant.

VERDICT—CIV-67 GLOBE

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiff, George Rumeh, and assess his damages at \$21,000.00.

F. W. HANNAH,
Foreman.”

“BERTHA LUCILLE RHODES,

Plaintiff,

Against

PACIFIC GREYHOUND LINES, a Corporation,
Defendant.

VERDICT—CIV-426 TUCSON

We, the Jury, duly empaneled and sworn in the above-entitled action, upon our oaths, do find for the plaintiff, Bertha Lucille Rhodes, and assess her damages at \$11,000.00.

F. W. HANNAH,
Foreman.”

The verdicts are read as recorded, and no poll being desired by either side, It Is Ordered that the Jury be discharged from the further consideration of these cases.

Counsel for respective parties stipulate that the presence of the Court Reporter to take the verdicts and proceedings pertaining thereto is waived, the Court now approving said stipulation.

Whereupon, It Is Ordered that judgment be entered by the Clerk forthwith upon the verdicts as follows:

For the Plaintiff, George Rumeh, and against the defendant, Pacific Greyhound Lines, in the sum of \$21,000.00.

For the Plaintiff, Bertha Lucille Rhodes, and against the defendant, Pacific Greyhound Lines, in the sum of \$11,000.00.

It Is Ordered that the Jury be excused from further service in these cases and until further order.

In the United States District Court for the
District of Arizona

MINUTE ENTRY OF THURSDAY,
NOV. 18, 1948

October, 1948, Term, at Phoenix.

Honorable Dave W. Ling, United States District Judge, Presiding.

[Title of Causes Nos. 67-426.]

It Is Ordered that Defendant's Motion for Judgment for Defendant notwithstanding the Verdict

and for Judgment in Accordance with Motion for Directed Verdict and Alternative Motion for New Trial, heretofore noticed for hearing Monday, November 22, 1948, be and it is continued for hearing until further order.

In the District Court of the United States for the
District of Arizona

MINUTE ENTRY OF MONDAY,
MARCH 8, 1949
(Globe Division)

November, 1948, Term, at Tucson.

Honorable Wm. H. Holly, U. S. District Judge,
Specially Assigned, Presiding.

[Title of Cause No. 67.]

Alexander B. Baker, Esquire, is present for the defendant and represents that counsel have stipulated that in the absence of Judge Jacob Weinberger orders fixing supersedeas bond and staying execution of judgment herein may be made by Judge Holly, if he is agreeable thereto.

Whereupon, on motion of said counsel for defendant,

It Is Ordered that supersedeas bond herein be fixed in the sum of \$25,000.00, and It Is Further Ordered that execution of judgment be stayed for a period of thirty days.

In the District Court of the United States for the
District of ArizonaMINUTE ENTRY OF MONDAY,
MARCH 8, 1949
(Tucson Division)

November, 1948, Term, at Tucson.

Honorable Wm. H. Holly, U. S. District Judge,
Specially Assigned, Presiding.

[Title of Cause No. 426.]

Alexander B. Baker, Esquire, is present for the defendant and represents that counsel have stipulated that in the absence of Judge Jacob Weinberger order fixing supersedeas bond and staying execution of judgment herein may be made by Judge Holly, if he is agreeable thereto.

Whereupon, on motion of said counsel for defendant,

It Is Ordered that, supersedeas bond herein be fixed in the sum of \$15,000.00, and It Is Further Ordered that execution of judgment be stayed for a period of thirty days.

In the United States District Court for the
District of Arizona

CLERK'S CERTIFICATE

United States of America,
District of Arizona—ss.

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of George Rumeh, Plaintiff, versus Pacific Greyhound Lines, a corporation, Defendant, numbered Civ-67 Globe, and in the case of Bertha Lucille Rhodes, Plaintiff, versus Pacific Greyhound Lines, a corporation, Defendant, numbered Civ-426 Tucson, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said cases, and that the attached and foregoing copies of the civil docket entries and minutes are true and correct copies of the originals thereof remaining in my office.

I further certify that said original documents, and said copies of the civil docket entries and of the minute entries, constitute the entire record in said cases as designated by the appellant, and the same are as follows, to-wit:

1. Civil Docket Entries in Civ-67 Globe.
2. Civil Docket Entries in Civ-426 Tucson.

3. Complaint, filed October 24, 1946, in Civ-67 Globe.
4. Plaintiff's Praecepice for Summons, filed October 25, 1946, in Civ-67 Globe.
5. Summons, filed October 30, 1946, in Civ-67 Globe.
6. Defendant's Answer, filed November 19, 1946, in Civ-67 Globe.
7. Affidavit of Service of Answer, filed November 19, 1946, in Civ-67 Globe.
8. Plaintiff's Demand for Jury Trial, filed November 21, 1946, in Civ-67 Globe.
9. Plaintiff's Motion to Set, filed November 21, 1946, in Civ-67 Globe.
10. Record on Removal from Superior Court of Pima County, Arizona, filed July 8, 1947, in Civ-426 Tucson: (Complaint, Summons and Return, Affidavit of Service by Mail, Notice of Petition for Removal, Petition for Removal of Cause to U. S. Dist. Court, Bond for Removal, Order for Removal, Minute Entry, and Clerk's Certificate.)
11. Defendant's Answer, filed July 11, 1947, in Civ-426 Tucson.
12. Affidavit of Service by Mail of copy of Defendant's Answer on Opposing Counsel, filed July 11, 1947, in Civ-426 Tucson.
13. Motion for Trial Setting and Notice of Hearing on July 28, 1947, at 10:00 o'clock a.m., filed July 21, 1947, in Civ-426 Tucson.
14. Affidavit of Service of Copy of Motion for Trial Setting, etc., filed July 21, 1947, in Civ-426 Tucson.

15. Motion to Consolidate Causes, filed July 24, 1947, in Civ-67 Globe, and Civ-426 Tucson.
16. Affidavit of Service of Motion to Consolidate by Mail, filed July 24, 1947, in Civ-67 Globe and Civ-426 Tucson.
17. Plaintiff's Motion for Changing the Manner of Taking Deposition, filed August 15, 1947, in Civ-67 Globe and Civ-426 Tucson.
18. Affidavit of Service by Mail, filed August 15, 1947, in Civ-67 Globe and Civ-426 Tucson.
19. Defendant's Objection to Plaintiffs' Motion for Changing Manner of Taking Deposition, filed August 19, 1947, in Civ-67 Globe and Civ-426 Tucson.
20. Deposition of Alice B. Newell, filed September 8, 1947, in Civ-67 Globe and Civ-426 Tucson.
21. Notice of Filing of Deposition, filed September 10, 1947, in Civ-67 Globe and Civ-426 Tucson.
22. Praecipe for Subpoenas Duces Tecum, filed December 29, 1947, in Civ-67 Globe and Civ-426 Tucson.
23. Notice of Taking Deposition of Viola Tuck, filed June 10, 1948, in Civ-67 Globe and Civ-426 Tucson.
24. Affidavit of Service by Mail of Notice of Taking Deposition, filed June 10, 1948, in Civ-67 Globe and Civ-426 Tucson.
25. Deposition of Viola Tuck, taken on behalf of plaintiffs, filed September 13, 1948, in Civ-67 Globe and Civ-426 Tucson.
26. Praecipe for Subpoena Duces Tecum, filed October 16, 1948, in Civ-67 Globe and Civ-426 Tucson.

27. Praeince for Subpoena, Wm. M. Boone, Jr., filed October 22, 1948, in Civ-67 Globe and Civ-426 Tucson.

28. Praeince for Subpoena to Carlos Salas, filed October 22, 1948, in Civ-67 Globe and Civ-426 Tucson.

29. Notice of Filing Deposition of Viola Tuck, filed October 27, 1948, in Civ-67 Globe and Civ-426 Tucson.

30. Defendant's Motion for Continuance of Trial, filed October 28, 1948, in Civ-67 Globe and Civ-426 Tucson.

31. Affidavit of Service by Mail, filed October 28, 1948, in Civ-67 Globe and Civ-426 Tucson.

32. Subpoena Duces Tecum as to Captain Carlos Salas, filed November 1, 1948, in Civ-67 Globe and Civ-426 Tucson.

33. Subpoena as to Wm. M. Boone, Jr., filed November 1, 1948, in Civ-67 Globe and Civ-426 Tucson.

34. Praeince for Subpoena to Frank Keefe, filed November 1, 1948, in Civ-67 Globe and Civ-426 Tucson.

35. Subpoena for Frank Keefe, filed November 1, 1948, in Civ-67 Globe and Civ-426 Tucson.

36. Jury List, filed November 1, 1948, in Civ-67 Globe and Civ-426 Tucson.

37. Verdict, filed November 4, 1948, in Civ-67 Globe.

38. Verdict, filed November 4, 1948, in Civ-426 Tucson.

39. Instructions to Jury, filed November 4, 1948, in Civ-67 Globe and Civ-426 Tucson.
40. Rejected Instructions, filed November 4, 1948, in Civ-67 Globe and Civ-426 Tucson.
41. Defendant's Memorandum of Costs and Disbursements, filed November 8, 1948, in Civ-67 Globe.
42. Affidavit of Service by Mail of Memo of Costs, etc., and Notice of Application for Assessment of Costs, filed November 8, 1948, in Civ-67 Globe.
43. Notice of Application for Assessment of Costs on November 12, 1948, at 10:00 o'clock a.m., filed November 8, 1948, in Civ-67 Globe.
44. Objections and Exceptions to Plaintiffs' Memo of Costs and Disbursements, filed November 10, 1948, in Civ-67 Globe.
45. Affidavit of Service by Mail, filed November 10, 1948, in Civ-67 Globe.
46. Plaintiffs' Amended Memorandum of Costs and Disbursements, filed November 13, 1948, in Civ-67 Globe.
47. Affidavit of Service by Mail of Amended Memorandum of Costs and Disbursements, dated November 13, 1948, in Civ-67 Globe.
48. Plaintiffs' Memorandum of Costs and Disbursements, filed November 9, 1948, in Civ-426 Tucson.
49. Notice of Application for Assessment of Costs on November 12, 1948, at 10:00 o'clock a.m., filed November 9, 1948, in Civ-426 Tucson.
50. Affidavit of Service by Mail of Memorandum of Costs, etc., and Notice of Application for

Assessment of Costs, filed November 9, 1948, in Civ-426 Tucson.

51. Defendant's Objections and Exceptions to Plaintiffs' Memorandum of Costs and Disbursements, filed November 12, 1948, in Civ-426 Tucson.

52. Affidavit of Service by Mail, filed November 12, 1948, in Civ-426 Tucson.

53. Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial, filed November 15, 1948, in Civ-67 Globe.

54. Affidavit of Service by Mail, filed November 15, 1948, in Civ-67 Globe.

55. Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict; and Alternative Motion for New Trial, filed November 15, 1948, in Civ-426 Tucson.

56. Affidavit of Service by Mail of Motion for Judgment for Defendant, etc., filed November 15, 1948, in Civ-426 Tucson.

57. Memo of Pts. and Auths. in Support of Motions, filed November 15, 1948, in Civ-67 Globe and Civ-426 Tucson.

58. Affidavit of Ser. by Mail of Memo. of Pts. & Auths., filed November 15, 1948, in Civ-67 Globe and Civ-426 Tucson.

59. Stipulation of Counsel that Defendant's Motions for Judgment Notwithstanding the Verdicts, etc., be submitted on briefs and memoranda, filed

December 8, 1948, in Civ-67 Globe and Civ-426 Tucson.

60. Supplemental Memo in Support of Defendant's Motions for Judgment for Defendant Notwithstanding the Verdict, filed December 18, 1948, in Civ-67 Globe and Civ-426 Tucson.

61. Affidavit of Service of Defendant's Supplemental Memorandum, filed December 18, 1948, in Civ-67 Globe and Civ-426 Tucson.

62. Plaintiff's Answering Brief on Defendant's Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in accordance with Motion for Directed Verdict and Alternative Motion for New Trial, filed December 31, 1948, in Civ-67 Globe and Civ-426 Tucson.

63. Affidavit of Service by Mail, filed December 31, 1948, in Civ-67 Globe and Civ-426 Tucson.

64. Defendant's Reply Memorandum, filed January 11, 1949, in Civ-67 Globe and Civ-426 Tucson.

65. Affidavit of Service by Mail of Defendant's Reply Memorandum, filed January 11, 1949, in Civ-67 Globe and Civ-426 Tucson.

66. Order Denying Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in accordance with Motion for Directed Verdict and Alternative Motion for New Trial signed at Los Angeles, March 2, 1949, filed March 7, 1949, in Civ-67 Globe.

67. Order Denying Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in accordance with Motion for Directed Verdict and Alternative Motion for New Trial

signed at Los Angeles, March 2, 1949, filed March 7, 1949, in Civ-426 Tucson.

68. Supersedeas and Cost Bond filed at Phoenix 3/29/49, docketed March 30, 1949, in Civ-67 Globe (with Court's approval endorsed thereon).

69. Supersedeas and Cost Bond filed at Phoenix 3/29/49, docketed March 30, 1949, in Civ-426 Tucson (with Court's approval endorsed thereon).

70. Notice of Appeal, filed March 31, 1949, in Civ-67 Globe.

71. Notice of Appeal, filed March 31, 1949, in Civ-426 Tucson.

72. Designation of Record and Proceedings to Be Contained in Record on Appeal, filed April 1, 1949, in Civ-67 Globe and Civ-426 Tucson.

73. Affidavit of Service by Mail of Copy of Designation of Record, etc., filed April 1, 1949, in Civ-67 Globe and Civ-426 Tucson.

74. Reporter's Transcript of Evidence and Proceedings, filed April 1, 1949, in Civ-67 Globe and Civ-426 Tucson.

75. Stipulation for Consolidation of Record on Appeal in Civ-67 Globe and Civ-426 Tucson, filed April 4, 1949, in Civ-67 Globe and Civ-426 Tucson.

76. Plaintiffs' Exhibits Nos. 1, 2 and 3 (X-rays), 4 (Time Table), 5 (Photograph), 6, 7 and 8 (X-rays), filed in Civ-67 Globe and Civ-426 Tucson.

77. Defendant's Exhibits A, B, C and D (Photographs), filed in Civ-67 Globe and Civ-426 Tucson.

78. Minute Entry of August 4, 1947, in Civ-67 Globe.

79. Minute Entry of August 4, 1947, in Civ-426 Tucson.
80. Minute Entry of Sept. 4, 1947, in Civ-67 Globe.
81. Minute Entry of September 4, 1947, in Civ-426 Tucson.
82. Minute Entry of November 17, 1947, in Civ-67 Globe.
83. Minute Entry of November 17, 1947, in Civ-426 Tucson.
84. Minute Entry of December 29, 1947, in Civ-67 Globe.
85. Minute Entry of December 29, 1947, in Civ-426 Tucson.
86. Minute Entry of October 4, 1948, in Civ-67 Globe.
87. Minute Entry of October 4, 1948, in Civ-426 Tucson.
88. Minute Entry of November 1, 1948, in Civ-67 Globe and Civ-426 Tucson.
89. Minute Entry of November 2, 1948, in Civ-67 Globe and Civ-426 Tucson.
90. Minute Entry of November 3, 1948, in Civ-67 Globe and Civ-426 Tucson.
91. Minute Entry of November 4, 1948, in Civ-67 Globe and Civ-426-Tucson.
92. Minute Entry of November 18, 1948, in Civ-67 Globe and Civ-426 Tucson.
93. Minute Entry of March 8, 1949, in Civ-67 Globe.
94. Minute Entry of March 8, 1949, in Civ-426 Tucson.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$8.40 and that said sum has been paid to me by counsel for the appellant.

Witness my hand and the seal of said Court this 6th day of May, 1949.

[Seal] /s/ WM. H. LOVELESS,
Clerk.

In the District Court of the United States
For the District of Arizona

Consolidated for Trial

No. Civ. 67—Globe

GEORGE RUMEH,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

No. Civ. 426—Tucson

BERTHA LUCILLE RHODES,

Plaintiff,

vs.

PACIFIC GREYHOUND LINES, a corporation,
Defendant.

Transcript of testimony and proceedings taken before the Honorable Jacob Weinberger, Judge, and Jury, on Monday, November 1, 1948, at 10:00 o'clock a.m. at Tucson, Arizona.

Appearances: On behalf of the Plaintiff George

Rumeh: Samuel H. Fowler, Esq., and A. L. Carlton, Esq. On behalf of the Plaintiff Bertha Lucille Rhodes: William G. Hall, Esq. On behalf of the Defendant Pacific Greyhound Lines: Alexander B. Baker, Esq. [1*]

PROCEEDINGS

(Court Reporter previously sworn by Clerk.)

(Jury roll called.)

Mr. Fowler: Now, we have one other motion, that Mr. A. L. Carlton of El Paso, Texas, who sits beside me, and who is admitted to practice in the Texas Circuit Court of Appeals, be admitted for the purpose of this case.

The Court: What is his name?

Mr. Fowler: A. L. Carlton.

The Court: What is the name of the——

Mr. Fowler: Rumeh versus Pacific Greyhound Lines and Bertha Lucille Rhodes; two cases consolidated.

The Court: Both?

Mr. Hall: As Mr. Fowler stated, there are two cases consolidated for trial, Rumeh versus Pacific Greyhound Lines and Bertha Lucille Rhodes versus the Greyhound Lines. I am appearing here representing Mrs. Rhodes and we would very happy to have these gentlemen associated in the trial of our case, and I believe Mr. Fowler wants to make a similar motion as far as the Rumeh case is concerned here.

* Page numbering appearing at foot of page of original certified Reporter's Transcript.

We do that so that in making objections it will quite facilitate the handling of the matter.

Mr. Fowler: I have made the motion in the Rumeh case.

The Court: The three counsel will act as counsel [2] in both cases?

Mr. Fowler: Yes.

The Court: I think we will have a further stipulation on that when we get down to the case. That may be ordered.

The Court: Call the calendar, Mr. Clerk.

The Clerk: Civil No. 426, Tucson, Bertha Lucille Rhodes, Plaintiff, versus Pacific Greyhound Lines, Defendant, and also Civil No. 67, Globe, George Rumeh versus Pacific Greyhound Lines.

Mr. Hall: The plaintiff is ready for trial.

Mr. Baker: The defendant has interposed a motion for dismissal on the grounds of the absence of a material witness, Alexander E. Hood. I think we showed due diligence in trying to get him here. This case has been continued, not due to the fault of counsel, but on account of the illness of Judge Speakman, and consequently we tried to get hold of the witness Alex E. Hood and immediately got out a subpoena and found that he was in the State of Maine and said he would return, but I only knew of it on the date that I filed the Motion for Continuance. Neither could we take his deposition or serve him by subpoena, so, I think I used due diligence in trying to procure the testimony of this witness, and as I have said, I have made the [3] affidavit stating what he would testify to.

Mr. Hall: If your Honor please, we oppose the

motion of counsel. This case was pending for a long time here in this court without any fault on the part of the plaintiff. We have prepared these cases for trial. Now, about their request for a continuance, until we got a copy of the motion last week, I think it was Thursday, we feel that the defendant has had ample time to secure depositions of this witness. This case has been pending, the Rhodes case has been pending about a year and a half and the Rumeh case has been pending for longer than that, and counsel has had a long time to secure depositions in this case from this particular witness, who Mr. Baker says is a material witness. We feel that the case should go to trial. There are witnesses from El Paso and there are a number of witnesses from El Paso and other places. We are here ready to go to trial. If the case was continued it would mean a great expense to the plaintiff and very much inconvenience to the plaintiffs and their attorneys and the witnesses in the case.

Mr. Baker: What Judge Hall says would ordinarily be true; I would have time to take depositions. If the Court please, I immediately got out a subpoena a few days after this case was set for trial and what [4] happened was, he advised by process server or his wife, that is, that he would be in Maine hunting.

The Court: How long has this case been at issue?

Mr. Baker: Two years.

The Court: The accident happened on March 25, 1946?

The Clerk: One case, your Honor, is November, 1946, and the answer filed in June, 1947.

The Court: That is two years and a half or thereabouts.

Mr. Baker: That is correct. This is a man we always thought would be present. He always agreed to be present. When the case was set for trial, the last time, I had to head him off by telegram. Judge Speakman was sick. I had to head him off. In other words, he was a witness that agreed to be present.

The Court: Was he ever present?

Mr. Baker: No.

The Court: This has been on the calendar——

Mr. Baker: Once before it was set for trial and then was postponed twice, was it, yes. Both times being postponed because of Judge Speakman not being able to be present. He always agreed to be present at the trial. We arranged for him to be present. We expected him to be present. He reported through——

Mr. Fowler: If it please the Court, Mr. Caldwell, [5] your Honor's secretary, knows how many times this case was at issue, set for trial. May I ask him how many times it was set for trial? The defendants have taken depositions in Bangor, Maine.

Mr. Baker: We knew she wasn't coming out here.

Mr. Fowler: The first time they made a request for a subpoena was nine or ten days ago.

Mr. Baker: For Alex E. Hood?

Mr. Fowler: Yes.

Mr. Baker: I challenge that.

The Court: What about this offer you made on your affidavit he would testify as stated in your affidavit? Do you offer that? Is there any objection?

Mr. Hall: Yes, we do object. We do not admit that the witness would so testify if he were present.

Mr. Baker: Oh, I have nothing further to say except just as I stated, these postponements are not on my suggestion or your suggestion; the postponements occurred on account of Judge Speakman's condition.

The Court: It seems to me that the case on the calendar, as long as this case has been pending, should be disposed of. I am afraid it is a long time between the framing of the issues and today. The issues were made—when was the answer filed?

The Clerk: Your Honor, Civil No. 67, Globe, Answer filed November, 1946, and Civil No. 426, [6] July 11, 1946.

The Court: Now, we have two years that have elapsed. I can see a reason for a continuance if it was the first time that something came up, or possibly the second time, but if it is not tried now, it will be another delay, which I don't think should occur.

Mr. Baker: May I ask something?

The Court: Yes.

Mr. Baker: There are two more witnesses, I don't know if I see them. May I ask if one of them is here? Captain Boone, is Captain Boone here?

Captain Boone: Yes.

The Court: I will say this, Mr. Baker, we don't have to continue today. We can go ahead in the morning and that will give you time to get your witnesses together.

Mr. Baker: Is Mr. Cody Bach here?

Mr. Fowler: Is he your bus driver?

Mr. Baker: Certainly. He is the bus driver that caused the accident. I will have to take until tomorrow morning.

The Court: I think you may take that time between now and tomorrow morning to gather up your witnesses.

Mr. Hall: May I suggest it would probably not [7] be necessary for the defendants to call their witnesses today because it will probably take most of the day to select a jury, and the plaintiffs to present their case. I make that suggestion that we can go ahead with the plaintiff's cases.

Mr. Fowler: We have the doctors here.

The Court: I suppose, Mr. Baker—

Mr. Baker: It is a terrible surprise. The bus driver is not here. The company advised he was to be here. Cody Bach, he isn't here, Captain?

Captain Boone: He came in yesterday afternoon.

Mr. Fowler: This is a situation, we have a doctor who came along here from El Paso, who is a physician and surgeon there and who has quite a practice. We have Mr. Holmes from El Paso, Howard Jones, Lieutenant of the El Paso Police, and police officers who want to get back tonight. We would like to have them put on. Mr. Hall has a doctor here. We have several witnesses who would like to get back if we could hear the matter this afternoon.

Mr. Baker: All right, I have no objections to putting on your doctors today. Let us recess until two o'clock and I will find my driver.

Mr. Fowler: We have to give the gentlemen some time to vote tomorrow. I think tomorrow is election day. [8]

The Court: Well, tomorrow everybody can do their voting before ten o'clock.

Mr. Fowler: I think so.

Mr. Hall: If we could select the jury and the other jurors be excused and then go ahead with our case——

The Court: I think what we will do is this: we will excuse the jury until three o'clock. That will give me time to look over the papers. I just came here this morning.

Mr. Baker: And that will give me time to find my driver.

The Court: Find your driver if you can. We can proceed with the case at three o'clock. The jury is excused until three o'clock and return up here at three o'clock.

I would like to see counsel for a moment.

(Thereupon Court recessed at 10:45 o'clock a.m. until two o'clock p.m.)

Afternoon Session

The Court: Call the calendar, Mr. Clerk.

The Clerk: Civil No. 426, Tucson, Bertha Lucille Rhodes versus Pacific Greyhound Lines and Civil No. 67, Globe, Rumeh versus Greyhound Lines, for trial.

The Court: Are you ready, gentlemen?

Mr. Carlton: Ready. [9]

Mr. Hall: The plaintiffs are ready, your Honor.

Mr. Fowler: The plaintiffs are ready.

Mr. Baker: We interposed a motion for postponement of the trial and you haven't ruled on it yet, your Honor.

The Court: The motion is denied.

Mr. Baker: Naturally, I am ready. Mr. Bach is ready.

The Court: I think there is a stipulation on file as to the trial of these two cases together.

Mr. Carlton: Yes.

The Court: The same effect as though both plaintiffs were joined in one complaint, is that correct?

Mr. Baker: They are together for the purpose of trial.

The Court: Is the stipulation on file to that effect?

Mr. Fowler: Yes, your Honor, I thought there was. I can't find a copy.

Mr. Baker: I can so stipulate.

Mr. Hall: I will stipulated now as to that file.

Mr. Baker: There was a motion and order. I think there was a minute entry order.

The Court: Have you a copy of the order?

Mr. Baker: There would be nothing but a minute [10] entry under our practice.

The Court: Both?

Mr. Fowler: Yes, the motion may be granted is before your Honor.

Mr. Baker: It was granted, I know.

The Court: Let the record show that they are consolidated.

(Jury impaneled and sworn.)

Thereupon after counsel for the respective parties read their complaints and answers and made their opening statements to the jury, the following proceedings were had:

Mr. Baker: I will reserve my opening statement until the close of the plaintiffs' case.

The Court: Call your first witness.

Mr. Carlton: Dr. Long.

The Court: Would you gentlemen prefer to proceed tonight with your witness or would you rather wait until tomorrow morning?

Mr. Fowler: The doctor has to go back to El Paso tonight. It won't take him very long.

DR. A. D. LONG,

being called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carlton: [11]

Q. Please state your name to the Court and jury.

A. Dr. A. D. Long.

Q. Dr. Long, where do you live?

A. El Paso, Texas.

Q. What is your business or profession?

A. I am a physician.

Q. How long have you been a physician?

A. Forty years.

Mr. Baker: Ask him if he is registered and licensed to practice in El Paso, Texas, and I will admit his qualifications.

Q. Are you duly licensed to practice in the State of Texas? A. I am.

Mr. Baker: We will admit his qualifications.

Q. Doctor, are you acquainted with George Rumeh? A. I am.

Q. How long have you known him?

A. Since May, 1946.

Q. Doctor, what is the nature, the general nature of your practice of medicine? A. How's that?

Q. What is the general nature of your practice of medicine?

(Testimony of Dr. A. D. Long.)

A. I do tuberculosis x-ray, all kinds of x-ray work and diagnosis.

Q. Do you do your own x-ray work? [12]

A. I do.

Q. Do you have an x-ray laboratory?

A. I do.

Q. I believe you said you had been acquainted with Rumeh since May, 1946? A. Yes.

Q. Did you make an examination of him on or about the 24th day of May, 1946? A. I did.

Q. Do you have with you any of the notes or memoranda that you may show the results or conclusions that you reached during that examination?

A. Yes, I do.

Q. What did you find to be his condition at that time?

A. Well, I examined him because of an injury he is supposed to have sustained in a transportation accident and he had some—he had a scalp wound; his nose was injured and his arm and shoulder were damaged and he had some pains in his back. I did a general x-ray examination in the case.

Q. Did you make an x-ray examination of his chest? A. I did.

Q. What did you find?

A. Well, I found what is evidently an old tuberculosis lesion in the right lung, and I found some—that there [13] was some fluid in there, evidently of recent development, and I also found that the right shoulder, arm bone was broken in the shoulder joint.

Q. Now, did you make any examination of his ribs?

(Testimony of Dr. A. D. Long.)

A. Yes, he had a fractured rib on the left side and one on the right, as I recall.

Q. State whether or not he had tuberculosis at the time you examined him?

A. Well, he had an inactive tuberculosis at that time, but he had an active tuberculosis.

Q. Have you examined him since that time?

A. Yes, I have examined him several times since then.

Q. What was the result of your examination? What were your findings on the second time you examined him?

A. Well, I found that the old tuberculosis lesion had been reactivated by the injuries, and that the fluid in the pleural cavity had increased and the right lung had shrunk and had become more incapacitated.

Q. What did you find as to the condition of his arm, his shoulder?

A. Well, he had a fracture in the shoulder joint, had a fixation of the shoulder joint where he had to move the whole arm with the shoulder blade in order to get motion to some extent. He had to move his [14] shoulder blade. He has no free motion of the arm and the humerus, the long bone, was broken and driven into the joint, into the shoulder.

Q. What do you mean by fixation of movement?

A. Fixation?

Q. Of movement.

A. That means that the shoulder joint, instead of being able to move in the joint, it had become fixed by fibrosis, scar tissues, and adhesions, and the joint

(Testimony of Dr. A. D. Long.)

would not move, and in order to get his arm to move freely, his shoulder joint had to move with it.

Q. Is that a condition that will improve with time?

A. It might improve some, but it will always trouble him. It is a bad condition also.

Q. As to the tubercular condition, has it improved since you saw him on the first occasion?

A. No, the tubercular condition is worse now than it was then.

Q. When was the last time that you made an examination of Mr. Rumeh?

A. About three days ago.

Q. Where? A. In El Paso.

Q. In your office? A. Yes.

Q. Do you use a fluoroscope in your practice?

A. I used a fluoroscope and also took an x-ray at the time to see what changes took place from the previous examination.

Q. What did you find; did you find any improvement?

A. Well, no, I didn't find any improvement. He had probably a little more function in the arm, shoulder joint, but his lung condition is worse. He had less breathing space than he had before.

Q. What was the condition of his ribs?

A. I don't think the ribs would be important. They got well. That just merely showed the severity of the injury he had sustained. He had sustained enough injury to that side to fracture a rib and break the shoulder joint, you know, but when the ribs got well they were all right.

(Testimony of Dr. A. D. Long.)

Q. What did you find on this last examination as regards his tubercular condition?

A. Well, his lung was contracted and the tissue that was air-containing tissue when I first saw him, has now contracted and there is no air going into it. His right lung is not functioning at all.

Q. Would you care to make a demonstration and show the jury what you are talking about?

Mr. Baker: I think I will object to that, the demonstration, I will object to that.

A. With the x-rays? [16]

Mr. Baker: To any demonstration.

Q. Then, Dr. Long, will you show—did you take x-ray pictures of Mr. Rumeh on this last examination? A. I did.

Q. Do you have those x-ray pictures with you?

A. Yes.

Q. Will you show the x-rays you made on former occasions and the ones you made recently and explain to them the change that appears by virtue of those x-rays? A. I will try to.

Mr. Baker: I reckon you better mark them for identification or offer them in evidence.

The Court: Mark them.

The Clerk: Plaintiffs' Exhibit No. 1. This will be No. 2. (Indicating.)

(Thereupon the above-referred to x-rays were marked for the purpose of identification as Plaintiffs' Exhibits No. 1 and No. 2.)

Q. All right, Doctor, that is No. 1. (Indicating.)

Mr. Baker: Well, I think I will object to it being

(Testimony of Dr. A. D. Long.)

submitted to the jury before it is submitted in evidence. It is demonstrated to the jury before it is admitted in evidence.

Mr. Carlton: If the Court please— [17]

Mr. Baker: To save time, if he will qualify his x-ray—

The Witness: That is just right to show it that way. (Indicating.)

Mr. Baker: Ask him who made this?

Q. Who made this x-ray picture?

A. Yes.

Q. Who made it? A. I made it.

Q. It has been in your possession since you made it? A. Yes.

Q. Has it been out of your possession?

A. No.

Mr. Carlton: We offer Plaintiff's Exhibit—

Mr. Baker: Ask him when he made it.

Q. When did you make this?

A. I made this on the 18th day of May, 1946, the first time I examined him.

The Court: Now, have you made your offer?

Mr. Carlton: We offer it in evidence.

The Court: It may be received.

Q. Now, Doctor—

A. Now, this man is standing with his back to you. This is the spinal column down here. (Indicating.)

The Court: Pardon me, Doctor, stand to one [18] side so that the jurors can see.

A. The spinal column—let us reverse it so they will catch it better. Now, he is standing with his back

(Testimony of Dr. A. D. Long.)

to you; the heart, belly, the nipple line—this is the heart shadow here (indicating), it is pulled over to this side. This is the normal left lung and this is the belly or abdomen below. All the dark area is air-containing tissue. And this lung is in fairly good shape, but you see how this one is contracted, and there is air-containing tissue here, down here, and then there is excessive fluid coming around here that he developed evidently as a result of the injury, and as time goes on, now, as I will show you, this air-containing lung structure on the right side has gradually diminished because of scar tissue and inflammation, and I stated to him when I found this condition—(indicating).

Mr. Baker: Wait a minute, we object to that as hearsay.

The Witness: Pardon me.

The Court: Objection sustained.

A. That is all to that one. We will put the other one on.

Q. Now, Doctor, referring to Plaintiffs' Exhibit 2, what is this (indicating) ?

A. This is the picture I made two, three or four [19] days ago, the last time he was in the office, x-ray of Mr. George Rumeh's chest.

Q. Have you made this x-ray yourself?

A. I have.

Q. It has been in your possession since you made it? A. It has.

Q. It hasn't been out of your possession?

A. No.

Mr. Carlton: The plaintiffs would like to offer

(Testimony of Dr. A. D. Long.)

this in evidence as Plaintiffs' Exhibit 2 (indicating).

The Court: It may be received. Any objection?

Mr. Baker: No objection.

Mr. Fowler: Let the record show no objection.

The Court: You have the answer of Mr. Baker that there was no objection?

The Reporter: Yes.

(Thereupon the above-referred to x-ray, having been marked for the purpose of identification as Plaintiffs' Exhibit 2, was received in evidence.)

A. There is no air-containing tissue. There isn't any where there was one-third of the lung functioning previously. And down here, that is all filled in, and this fluid area has become enlarged, consolidated, so his right lung is not functioning at all now. The ribs are flattened down on it. The ribs and chest pull the other way and he really has one lung [20] there now, where he had a lung and fifty per cent of the other lung previously. I believe that is all I can show you about that.

Q. Did you prescribe any treatment for Mr. Rumeh the first time you treated or examined him?

The Court: Just a minute.

Mr. Baker: I will object to that, as to what treatment he prescribed.

A. Might I show the picture of that shoulder joint?

Q. Yes, let us have that too, Doctor.

The Court: Mark that for identification.

(Testimony of Dr. A. D. Long.)

Mr. Carlton: Mark it Plaintiffs' Exhibit 3, (indicating).

The Clerk: Plaintiffs' Exhibit No. 3 for identification.

(Thereupon the above-referred to x-ray was marked for the purpose of identification as Plaintiffs' Exhibit No. 3.)

Q. Doctor, this exhibit is marked Plaintiffs' Exhibit 3, will you state what it is (indicating)?

A. It is an x-ray of the right shoulder in the case of Mr. Rumeh.

Q. Who made that picture?

A. I made this picture.

Q. Have you had it in your possession since you made it? A. Yes. [21]

Q. Has it been out of your possession since that time? A. No.

The Court: When was it made?

Q. When was it made?

A. It was made at or about the time the first one was made, the 18th day of May, 1946. I will take this one out (indicating).

Mr. Baker: Are you going to offer it in evidence?

Mr. Carlton: We would like to offer it in evidence.

Mr. Baker: No objection.

The Court: It may be received.

The Clerk: Plaintiffs' Exhibit 3 in evidence.

(Thereupon the above-referred to x-ray, having been marked for the purpose of identification as Plaintiffs' Exhibit 3, was received in evidence.)

(Testimony of Dr. A. D. Long.)

Q. Doctor, what is that?

A. That is a picture of the apex or top of the right lung and right shoulder joint, showing the upper end of the femur, scapula, the collarbone, and the top of the right lung.

Q. Now—

A. Now, you will see here that at that time there was air-containing tissue at the top of that lung [22] and was functioning fairly good. The dark area shows there was air in it. You can see here the sleeve-like appearance, if you can see it closer there is a break right across here. (Indicating.) This bone was broken here and driven—it is sloped by there, sloped here. The shaft of the bone is driven into the soft part of the head of the bone and the rotating part of the head of this bone is turned down and flat and the bone is shoved up by it, and that united that way. This has been that way for several months and was practically healed at the time and there is nothing you can do about it. You can't shorten it. It is left in that fix and will always be that way.

Q. From your examination of him this last week, state whether or not it is your opinion that that condition has improved or has gotten worse or is the same.

A. He can move this function of the shoulder joint very slightly, but when he moves this arm, the shoulder blade has to go with it. It has to work up and down like a hinge, and a fixation in here, where this femur, humerus doesn't rotate in the shoulder joint, he has to work the shoulder blade to work the arm to any great extent. (Indicating.)

Q. The condition that you found in addition, with

(Testimony of Dr. A. D. Long.)

regard to his nose, has that condition been relieved [23] or is it something that would bother him in the future? A. No, it is a permanent condition.

Q. The wound that you observed on his scalp, has that become permanent or does—

A. That is healed with evidently no bad effects.

The Court: Are you through with this light now?

Mr. Baker: I'm not quite through. I have cross-examination.

The Court: I was going to say that it might be discarded for the time being until cross-examination. All right.

Q. Now, Doctor, from the examination that you made of Rumeh the first time and all subsequent examinations, including the examination made last week, state whether or not, in your opinion, these conditions that you have described are temporary or are they permanent?

A. They are permanent.

Q. Doctor, from the nature of the injuries that you have described, from the examinations that you have made, state if you have an opinion whether or not they are total?

A. They are total. He is not able to work. He doesn't have enough breathing space to carry on work, and with his arm crippled, he is handicapped in that [24] respect, you know, if he started to work with one lung out of commission and diseased, he wouldn't be able to do it and it won't be any better.

Mr. Carlton: Take the witness.

(Testimony of Dr. A. D. Long.)

Cross-Examination

By Mr. Baker:

Q. When was the first time you examined him, Dr. Long?

A. You will have to talk a little louder. I have hay fever. I don't hear good.

Q. When did you first examine Mr. Rumeh?

A. May 18, 1946.

Q. Will you please put your Plaintiffs' Exhibit No. 1 up there (indicating).

A. This bottom one.

Q. Did he give you a history of having an accident on March 25, 1946?

A. I beg your pardon?

Q. Did he give you a history of having an accident on March 25, 1946?

A. He gave me a history of having an accident a few months prior to the time that I examined him; I don't remember the exact date.

Q. A few months prior? A. Yes.

Q. Are you—you state that you knew that he had [25] had tuberculosis before the time of this accident? A. Yes.

Q. Will you please show on Plaintiffs' Exhibit No. 1 the lesions that he had in his lungs prior to the time of the accident.

A. The thing that makes me know he had trouble there is because of the light appearance of this area here (indicating). When I made the picture and checked it, I told him he evidently had tuberculosis there. He told me he had. This light area here is old

(Testimony of Dr. A. D. Long.)

scar tissue. While he was all right and able to go about his business——

Q. Just a minute; just a minute, don't make a speech.

A. That is how I knew it. There is the evidence there. The light area which you see would not have been caused from anything else.

Q. You know from that light area in the right lung, that he had lesions there before the time of the accident? A. Yes.

Mr. Baker: That is all. Just one question.

Q. That is the same lung you now say there is no air space in? A. Yes, but——

Q. Just answer my question. [26]

A. Yes, I will say there is no air space in there; it has been obliterated.

Mr. Baker: That is all.

The Court: Anything further.

Mr. Carlton: That is all. Now, if the Court please, may Dr. Long be excused to go back to El Paso?

Mr. Baker: Yes.

The Court: If there is no further need for the doctor, he may be excused. These exhibits, are all of them here, are they?

Mr. Carlton: Yes, sir, they are all here.

The Court: Gentlemen of the jury, we are about to take a recess until tomorrow morning. I admonish you not to discuss this case amongst yourselves or with anybody else or allow anybody to discuss it in your presence. Furthermore, you are not to express an opinion of the merits of this case until this case has been submitted to you for your decision.

You are now excused until ten o'clock tomorrow morning.

I will ask counsel to step forward at this time.

(Discussion had outside the record.)

(Thereupon Court was adjourned at five o'clock, p.m., November 1, 1948, to Tuesday, November 2, 1948, at ten o'clock, a.m.) [27]

Tuesday, November 2, 1948—Ten o'clock a.m.

The Court: It is stipulated that all the jurors are present?

Mr. Baker: Yes, your Honor.

The Court: You may proceed.

Mr. Carlton: If the Court please, the plaintiffs would like to put Mr. Cody Bach on the witness stand at this time as an adverse witness under the rules.

Mr. Baker: He is not the managing officer. Under our statute only the managing officer can be put on as an adverse witness.

The Court: Is he a managing officer?

Mr. Baker: He is only a driver.

The Court: Where is your statute?

Mr. Baker: Do you have the Code here? I think Judge Hall, you can concede that?

Mr. Hall: It is managing officer.

The Court: I would rather look at the statute to make sure.

Mr. Hall: I think he has to be a manager, superintendent, or having some supervision over the operation.

The Court: Well, if you stipulate as to that, I have no need to go any further.

Mr. Hall: I just suggest this: The reason I don't

want to stipulate to it, if the Court please, is because he was in charge of a certain department at [28] that particular time. I don't know if that will be sufficient.

The Court: Will you find the statute?

Mr. Baker: We have practiced here a long time—

The Court: Have you looked under "Witnesses"?

Mr. Hall: I think he is right.

Mr. Carlton: I will call Viola Tuck.

The Court: Are you abandoning that for the moment?

Mr. Carlton: I guess I am, your Honor, under the advice of Arizona counsel. I guess we will for the time being. I would prefer to put him on if I can.

The Court: If you find you can, you may put him on later.

VIOLA B. TUCK,

called as a witness on behalf of the plaintiffs, being first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Carlton:

Q. Please state your name.

A. Viola B. Tuck; Mrs. Carlton W.

The Court: How do you spell the last name?

The Witness: (Spelling) T-u-c-k.

Q. Where do you live? A. El Paso, Texas.

The Court: Is this your usual arrangement for the witness chair? Or can the witness face the jury more directly. I think you can face the jury more directly.

Q. Talk loud enough so that the Court can hear you, as well as the jury.

(Testimony of Viola B. Tuck.)

Where were you living on or about the 25th day of March, 1946? A. Lordsburg, New Mexico.

Q. How long had you been living in Lordsburg at that time? A. A little over a year.

Q. Were you employed at that time?

A. Yes, sir.

Q. For whom were you working?

A. The Pacific—working for the Greyhound Cafe; employed by Tom Shoon, manager of the cafe.

Q. What were your duties there?

A. Cashier, and ticket clerk.

Q. As cashier what did you do; what were your duties?

A. To receive money from the cafe customers.

Q. As ticket agent what did you do?

A. Sold tickets on the Greyhound Lines.

Q. Were you employed by the Greyhound Lines?

A. No.

Q. As ticket agent did you have access to the bus [30] schedules and bus fares and things of that kind?

A. I was employed by the agent, but I did have access to the ticket tables, but I wasn't the agent.

Q. Were the tickets you sold printed with the fares—tickets printed with the fares direct or did you figure out the fares?

A. They were left blank for the amount.

The Court: Is there any dispute about that?

Mr. Baker: I didn't hear the question. The paid passenger? I admitted he was a paid passenger. I think the pleadings admitted that.

Mr. Carlton: If the Court please, I want to get

(Testimony of Viola B. Tuck.)

in evidence the bus schedule. I am trying to lead up to that bus schedule. If the Clerk please, I need that deposition because that is in it. Excuse me just a minute.

The Court: Certainly.

Mr. Carlton: Mark this for identification, please.

The Clerk: That is Plaintiff's Exhibit No. 4 for identification.

(Thereupon the above-referred to document was marked for the purpose of identification as Plaintiffs' Exhibit No. 4.)

Q. You have testified, Mrs. Tuck, that you had access to the time tables, or acquainted with the [31] time tables. I hand you Plaintiffs' Exhibit 4 and ask you to state what that is (indicating).

A. That is the time table Schedule No. 9 in effect at the time of the accident and issued in December, 1945.

Mr. Carlton: We would like to introduce it in evidence.

Mr. Baker: May I see it? We object to the offer on the grounds that it would be immaterial in any respect, and in addition it has not been properly qualified or identified. She admits she is not the agent of the Pacific Greyhound Lines, nor an employee of the Pacific Greyhound Lines.

The Court: What was that?

Mr. Baker: She is not an employee of the Pacific Greyhound Lines let alone an agent. She has already testified to that. I don't know how she can testify about that. It doesn't show on the face it is the

(Testimony of Viola B. Tuck.)

effective tariffs and schedule in effect at the time of the accident.

The Court: I didn't keep such good track of her testimony.

Mr. Baker: She specifically testified that she was not an employee of the Greyhound Lines and not an agent.

The Court: What else did she testify to? [32]

Mr. Carlton: She sold tickets for the Greyhound which was binding upon—

The Court: She testified about bus schedules?

Mr. Carlton: Yes, she said she had access to them and used them.

Mr. Hall: I think, if the Court please, that would make it admissible.

Mr. Carlton: She was an agent and binding the company although she said she was not an agent.

The Court: She testified she sold tickets?

Mr. Carlton: Sold tickets.

The Court: And distributed these schedules?

Mr. Carlton: That's right.

The Court: And check back?

Mr. Carlton: And check back.

The Court: Objection overruled.

The Clerk: Plaintiffs' Exhibit 4 in evidence.

(Thereupon the above-referred to document having been marked for the purpose of identification as Plaintiffs' Exhibit 4 was received in evidence.)

Q. Now, Mrs. Tuck, does that schedule referred to there as Plaintiffs' Exhibit 4, does it show mileage

(Testimony of Viola B. Tuck.)

between the destinations shown on the schedule?

Mr. Baker: Just a minute; just a minute; if the Court please, I object to that. The exhibit speaks for itself. They introduced it. She testified she [33] was not an agent of the company.

The Court: I think that is correct.

Mr. Carlton: I will withdraw the question.

Q. Mrs. Tuck, were you a passenger on a Greyhound bus on or about the 25th day of March, 1946?

A. Yes, sir, I was a paid passenger.

Q. Where did you board the bus?

A. Lordsburg.

Q. Who was the driver of the bus?

A. Cody Bach.

Q. Did you know Cody Bach?

A. I knew him in the depot, yes.

Q. How long have you known him?

A. Until I went to work for—

The Court: I can't hear the witness.

Q. You will have to talk louder. You knew Cody Bach as a driver for the Greyhound Bus Company?

A. Yes, sir.

Q. Did you observe the time that he came into Lordsburg on the day in question? A. I did.

Q. Did you have any conversation with him when he came in?

A. To the effect that I had planned to go to El Paso.

Mr. Baker: Just a minute; just a minute; answer "yes" or "no". [34]

Q. Did you have any conversation with him?

A. Yes.

(Testimony of Viola B. Tuck.)

Q. What was the conversation?

A. I informed him that I was coming to El Paso on his bus.

Q. Was any other conversation had between him and you relative to your coming to El Paso and your working late? A. Yes.

Q. What was that conversation?

Mr. Baker: Just a minute; we object to that as being hearsay, immaterial and irrelevant.

The Court: About coming to work?

Mr. Carlton: No, she was coming to El Paso with him on his bus run and I just wanted to get in the conversation relative to it and what happened, to show the friendly relation between her and the company and the driver, if it is admissible for that purpose.

Mr. Baker: That is not admissible, that is not proper in this case.

The Court: She may testify generally in that respect without going into too many details.

Q. All right. Did you check your baggage?

A. I did.

Q. And was it put into the bus? [35]

A. It was put on the bus but it was not checked in at the time on the bus.

Q. Who tore up the check, if anyone?

A. Mr. Bach.

Q. Where were you sitting on the bus?

A. Third row, aisle seat, behind the driver.

Q. Were you sitting in the seat all the way from Lordsburg to the point where the car did not travel any farther? A. Yes, sir.

(Testimony of Viola B. Tuck.)

Q. Do you know whether or not the bus was late leaving Lordsburg? A. It was.

Q. Do you know whether or not the bus was late arriving at Deming? A. It was not.

Q. Do you know whether or not the bus was late leaving Deming? A. It was.

Q. How much late?

A. Approximately eight minutes.

Q. Was that bus involved in an accident with a Ford automobile at a point somewhere between Deming and Las Cruces and about eight or nine miles west of Las Cruces? A. It was. [36]

Q. What time of day was the accident?

A. Approximately 6:10.

Q. Do you know whether or not the bus was on time at the point of the accident? A. It was.

The Court: Was that morning or evening?

The Witness: Evening.

Q. You said it was about eight minutes late leaving Deming and it was on time at the point of this accident. How far is it there from Deming to Las Cruces? A. Sixty miles.

Q. What is your testimony as to the distance between the point of this accident and Las Cruces?

Mr. Baker: If she knows.

A. Approximately eight miles.

Q. What was the speed at the time of this accident, or just immediately prior thereto?

A. I wasn't conscious of any change in the rates of speed until the brakes were applied and I was

(Testimony of Viola B. Tuck.)

thrown forward breaking my teeth and knocking them out.

Q. Were you thrown to the floor of the bus at that time? A. Not the first time.

Q. After you were thrown forward as you testified, did you straighten yourself up and look out in front [37] of the bus? A. I raised by head.

Q. Did you look out in front? A. I did.

Mr. Baker: Just a minute, we object to his leading the witness.

The Court: Yes, the objection is well taken.

Q. What did you see when you looked out?

A. I saw the car approaching the bus on the bus' side of the road, just far enough away so that I could see the entire car and it turned sharp to the left.

Q. Now, at the time you looked out, I believe you said that the car was on the left, on its left?

A. On its left; the bus' right side of the road.

Q. What was the course of the bus, was it straight down the center or—

A. The bus was straight down his side.

Q. At the time you looked up, was it straight down or turning to the right or what was its direction?

Mr. Baker: We object to his leading the witness. She already testified—

The Court: What was that?

Mr. Baker: Objection to the question on the ground, first, it is leading. She already answered the question and he is trying to lead her. [38]

The Court: She may answer.

(Testimony of Viola B. Tuck.)

Q. Go ahead.

A. The bus had started to move off to the right of the road very slightly.

Q. Now, how far would you estimate that it was from the bus to the car at the first time you saw the car?

A. I wouldn't know the distance in feet, but I should presume it was to the end of this courtroom (indicating).

Mr. Baker: Just a minute; we object to that. She said that she was assuming something.

A. The distance in feet—

The Court: Just a moment; when there is an objection by counsel withhold your answer until the Court rules.

Mr. Baker: If she is going to "presume" something—that is her testimony.

The Court: The objection is well taken. That portion of the answer may be stricken out.

Q. Can you estimate the distance?

A. To the end of the courtroom.

Q. Were you in the bus at the time of the crash?

A. I was.

Q. Do you know whether or not the Ford hit the bus head on, or did it hit it from the side, or how was the point of impact between the two vehicles? [39]

A. Slightly on the side.

The Court: What is that answer?

The Witness: Slightly on the side.

Q. Slightly on the side. You mean by that the

(Testimony of Viola B. Tuck.)

Ford hit the bus on the side or the bus hit the Ford on the side?

A. The bus hit the Ford on the side. The Ford had already started to turn sharp left.

Q. And the bus hit the Ford?

A. The bus hit the Ford.

Q. Was the point of impact on the pavement or partly off or partly on?

A. It was partly off; on the edge of the pavement.

Q. Where were you after the bus came to a final stop?

A. On the floor between the seats.

Q. Where was the bus as regards the highway?

A. It was entirely off the highway.

Q. Now, by that do you mean that it was off of the pavement or off of the shoulder or off both?

A. It was off the pavement, a foot and a half off, all wheels resting off.

Q. Where was Bach when the bus came to a stop?

A. When I first saw him, he was lying prone in front of the bus.

Q. How far would you say he was in front of the bus? [40] A. Thirty feet.

Q. Did you know George Rumeh at the time?

A. No.

Q. Do you know him now? A. Yes.

Q. Did you see him at the time of this crash? Or immediately thereafter? A. No.

Q. Do you know where he was after the crash?

Mr. Baker: Just a minute; didn't she answer that she didn't know where he was?

(Testimony of Viola B. Tuck.)

The Court: I don't recollect, there is no question about that.

Mr. Baker: What is her answer?

The Court: No questions were asked about that.

Q. Do you know where George Rumeh was after the crash? A. He wasn't in the bus.

Q. Well, did you see more than one person out on the sand in front of the bus after the crash?

A. I was only looking for one person. I knew no one else on the bus. The driver wasn't there. I didn't know anyone else. I wasn't looking for anyone.

Q. Did you get off the bus at once? A. No.

Q. Did you speak to Cody Bach before you got off the [41] bus and while he was on the ground?

A. I did.

Q. What was your conversation with him about?

A. I asked him if there was anything he wanted me to do.

Q. What did he tell you?

A. He asked me if any of the passengers were injured in the bus. I told him, "Yes." He told me where the first aid was. I opened the box on the front seat, took the bandages, iodine, ammonia, and so forth, took it and started to give some of the passengers first aid immediately.

Q. Now, you did physically get off the bus?

A. I did.

Q. Do you know Captain Salas of the New Mexico State Highway Police?

A. I know him now, yes.

(Testimony of Viola B. Tuck.)

Q. Did you see him there that evening at any time? A. I did.

Q. At the time you got off the bus, had Captain Salas arrived, or arrived later?

A. Captain Salas arrived when I got off the bus.

Q. The persons that were injured, were any of them injured enough so that it was necessary to take them away in an ambulance? A. Yes. [42]

Q. Do you know who was driving the Ford car, a man or a woman, or who the passengers were in the Ford car?

A. Only what I have been told since the accident.

Q. And do you know what became of them?

A. They were still there when I left.

Q. After you got off the car—withdraw the question. Did you receive any injuries in this crash?

A. I did.

Q. What were your injuries?

A. I had two teeth cracked; one broken off to the extent it had to be pulled. The front tooth——

The Court: I can't hear you; just speak slowly and distinctly and then we will all hear you.

A. Two teeth were cracked; needed repair; one broken off at the roots and had to be replaced. I had a sprained wrist, sprained ankle, wrenched shoulder, and trouble with my back which I still have and will have for the rest of my life; bruised shin; broken veins in the leg.

Q. Did you file suit in this matter?

A. I did.

(Testimony of Viola B. Tuck.)

Q. How long was it after you got off the bus before you were taken to Las Cruces?

A. A half hour.

Q. What were you doing all that time? [43]

A. Walking around trying to ease the pain in my teeth, my shins, my back.

Q. Did you make an observation and can you tell where the point of impact was between the Ford car and the bus? A. Very definitely.

Q. How could you tell it?

A. Debris on the highway, on the shoulder, sand thrown up on the road, splinters, glass and marks where the car had been pushed.

Q. The Ford car had been pushed?

A. Yes.

Q. How far did the bus go after it passed the point of impact? A. A half block.

Q. And I believe you testified that it stopped entirely off the pavement? A. Yes, sir.

Q. Did you make any observations and did you and were you able to find any evidence of the bus having put on brakes prior to the accident?

A. There were skid marks back up the highway.

Q. How far were those skid marks from the point of impact? A. A block.

Q. A city block? [44] A. A city block.

Q. Those skid marks that you found back there, were they skid marks made by a dual wheel or a single wheel? A. Dual wheel.

Q. By a dual wheel, what do you mean?

A. Two wheels on either end of the axle.

(Testimony of Viola B. Tuck.)

Q. Describe those marks that you found back there about a block away?

A. They were very heavy to begin with and gradually faded away and slightly at an angle at the right of the road.

Q. Was the angle to the right or left?

A. To the right toward the borrow pit.

Q. Toward the borrow pit. Were your injuries to your tooth caused by the original application of the brakes back there or was it caused by the crash of the Ford car?

A. As far as my mouth and teeth was concerned, that was by the brakes being applied.

Q. Back there a block away?

A. A block away.

Q. How come you filed your suit in El Paso?

Mr. Baker: We object to that as immaterial and irrelevant.

The Court: Sustained. [45]

Q. Mrs. Tuck, did you later go on to El Paso that evening? A. I did.

Q. How long did you stay in El Paso on this visit? A. Two or three days.

Q. During that time did you consult medical or dental assistance?

Mr. Baker: Just a moment; if the Court please it is wholly immaterial in this case. This is not Mrs. Tuck's case.

The Court: Objection sustained.

Q. Mr. Tuck, I believe you said this accident was about 6:10 in the afternoon of March 25, 1946?

A. Yes, sir.

(Testimony of Viola B. Tuck.)

Q. On or about March 27, 1946, did you sign any papers that purported to deal with the circumstances surrounding this incident?

Mr. Baker: Just a minute; we object to that as being wholly immaterial, irrelevant, if the Court please, it would be hearsay. I don't know what she signed; nothing to do with this case.

The Court: What is the purpose of that inquiry?

Mr. Carlton: If the Court please——

The Court: Come up to the bench.

(Counsel and Court confer out of the hearing of the Jury as follows): [46]

Mr. Carlton: If the Court please, she did sign such a statement and she has been interrogated about it, although she has never seen it.

Mr. Baker: It hasn't been in this case, has she?

Mr. Carlton: She will be.

Mr. Baker: I am trying my case, too.

The Court: When that will be produced, you can cross-examine and show the true facts with relation to it.

Mr. Carlton: All right.

The Court: Objection is sustained.

(To the Jury.)

Q. Mrs. Tuck, at the time you were thrown forward and broke your tooth and you looked up and saw this car coming, state whether or not the car at that time had already swerved to its left or was it approaching from the opposite direction on its wrong side of its highway?

(Testimony of Viola B. Tuck.)

A. As I first glanced up the car was coming straight towards the bus and at the same instant turned sharp left, and by that time they were together.

Q. You didn't see the car until after you had been thrown forward and your tooth knocked out?

A. I had been reading. I wasn't conscious of anything until the brakes were applied and I was thrown [47] forward.

Q. After you were thrown forward, how long would you say it was before you saw the car turn to its left?

Mr. Baker: Just a minute; we object to that, if the Court please. She already answered. She said she saw it at the same instant. She already testified. They didn't like the answer, so they asked another question. She testified when she looked up she saw the car coming toward the bus and at the same instant—

The Court: She may answer.

A. When I first saw the car it was far enough away so that I could see the entire car, and it turned sharp to its left and approaching—

Q. At the time you saw the Ford car, had you been already thrown forward and your tooth knocked out? A. I had.

Q. How long would you say it was from the time you were first thrown forward until you were able to look up and see the car? A. A half a minute.

Mr. Carlton: That is all. Take the witness.

(Testimony of Viola B. Tuck.)

Cross-Examination

By Mr. Baker:

Q. Mrs. Tuck, you state that—— [48]

The Court: Do you want to change your position over there?

Mr. Baker: Not right now.

Q. Mrs. Tuck, you state that at the time of this accident you were employed in some cafe in Lordsburg? A. Yes.

Q. How long had you been employed at that cafe?

A. Six months.

Q. You were working for whom?

A. Tom Shoon and D. S. Pons and Topsy.

Q. And those?

The Court: I didn't get that answer.

Q. Those three men were the owners and operated this cafe?

A. Yes, sir, they had three partners. I only know the third by nickname.

Q. That cafe was not operated by the Pacific Greyhound Lines? A. No.

Q. You were, you say, the cashier in this restaurant, is that right?

A. Cashier and sold tickets in conjunction——

Q. Cashier. We will stop with that.

A. All right.

Q. As to your duties as cashier, you also sold tickets on the Greyhound Lines? [49]

A. And connecting lines.

Q. That was, however, for these three men that you mentioned that you worked for?

(Testimony of Viola B. Tuck.)

A. We collected the fares.

Q. They did. A. Yes, sir.

Q. I mean they evidently got the money.

A. Yes, sir.

Q. As far as you were concerned you were at all times working for these three men plus the two nicknames?

A. I know—one was known as Lee and the other as Bum Cook.

Q. And I believe you stated that you were going to El Paso this day? A. Yes, sir.

Q. And Cody Bach was the driver of the bus?

A. Yes, sir.

Q. Which you boarded. How long had you known Cody Bach as a driver?

A. Since I have been employed there.

Q. How long was that? A. Six months.

Q. He had been on regular runs for six months at that time? A. Yes, sir. [50]

Q. You proceeded from Lordsburg to Deming?

A. Yes, sir.

Q. You left Deming, do you know at what time; do you know?

A. No, sir, I don't know the exact time. I know that we were late.

Q. How late? A. Eight minutes.

Q. How did you know that? That you were eight minutes late if you didn't know the time, Mrs. Tuck?

A. I had no schedule in front of me. I was to meet my husband at El Paso. We had an engagement. I worked in the cafe at Lordsburg until the

(Testimony of Viola B. Tuck.)

schedule was called. I wanted to go to the hotel and change so I would be ready for my engagement.

Q. You say he was eight minutes late in Deming—

A. The last time I looked at my watch.

Q. Did you keep your eye on your watch from then on until the time of the accident? A. No.

Q. You did not? A. No.

Q. But you say that he was on his schedule at the time of the accident.

A. I observed the time that my watch had stopped; it was broken by the impact. [51]

Q. You say he was on time at the time of the accident? A. Yes, sir.

Q. Although he had not arrived yet at Deming—I mean arrived at Las Cruces, is that right?

A. I believe there was ten minutes more to go to Los Cruces. He was eight miles from Las Cruces, that put him on time.

Q. You don't know if he was on time at the time of the accident; you are doing it by deduction.

A. My watch was knocked out. It was crushed at the time I was thrown to the floor.

Q. You say before the time of the accident you were reading and not paying attention to the road and surrounding circumstances?

A. I have made the trip so many times I was perfectly relaxed.

Q. You were perfectly relaxed?

A. Yes, sir.

Q. There was nothing in the operation of the bus

(Testimony of Viola B. Tuck.)

that caused you any fear, anxiety or anything of that sort, was there? A. No, sir.

Q. No unusual operation of any kind, is that right?

A. No, the road dipped and I was used to that.

Q. And then you say that at this time while you [52] were perfectly relaxed and reading, you felt a jar.

A. I felt a jar and was thrown forward immediately as soon as the brakes were applied, I was thrown to the seat in front of me.

Q. Before the time of this jar, this first jar, you had never seen this Ford Coupe?

A. I had been reading, Mr. Baker. I had no reason to look up.

Q. You say then that you felt this jar and was thrown forward? A. Yes, sir.

Q. And then looked up? A. Yes, sir.

Q. You saw this Ford Coupe coming; it was a Ford Coupe, wasn't it?

A. I couldn't tell whether it was a coupe or not.

Q. Let us call it a coupe. A. A Ford car.

Q. You saw the Ford car for the first time?

A. Yes, sir.

Q. And that was after Mr. Bach had apparently applied his brake, is that right? A. Yes, sir.

Q. At that time you say—I believe you testified that this Ford was coming directly at the bus?

A. It was on the bus' side of the road. [53]

Q. I believe you testified it was coming directly at the bus? A. Yes, sir.

(Testimony of Viola B. Tuck.)

Q. It was on the bus' side of the highway?

A. Yes, sir.

Q. How far was that Ford from the bus at that time?

A. Far enough so that I could see the entire car.

Q. Well, could you estimate then how far that was; thirty feet, forty feet?

A. The length of the courtroom (indicating).

Q. What? A. The length of the courtroom.

Q. You say the length of this courtroom. That is your estimate? A. Yes.

Q. But you judge it mostly by the fact you could see the entire car, is that right?

A. Considering that two seats in front of me, the driver's seat and over out through the steering wheel and out through the window.

Q. In other words, this bus was high, higher than the Ford car? A. Yes, sir.

Q. And there were seats in front of you?

A. Two, two seats.

Q. Two seats. [54]

A. And no one sitting in them.

Q. Did you keep your eye on that Ford car from that moment on?

A. Mr. Baker, it was coming head on. There wasn't a fraction of a minute.

Q. Just answer my question. A. Yes, sir.

Q. Just answer the question. Did I understand you; did you keep your eye on that Ford car from the time you observed it until the time of the impact?

A. Until I went down on the floor.

(Testimony of Viola B. Tuck.)

Q. That was the final impact, wasn't it?

A. Yes.

Q. The Ford car kept coming straight on into the bus? A. No, sir.

Q. What did it do?

A. It turned sharply to the left.

Q. It turned sharply to the left?

A. Yes, sir.

Q. And the driver was pulling to his right, wasn't he? A. Yes, sir.

Q. At the moment you felt the first impact, in other words the first application of the brakes, was the driver then pulling his bus to the right? [55]

A. Very slightly.

Q. And he continued to pull it to the right, didn't he, from then on? A. I couldn't say.

Q. You know when the impact occurred, don't you? A. Yes, sir.

Q. That was practically almost off the pavement, wasn't it? A. Yes, sir.

Q. So, he did continue to pull to the right, you know that, don't you? A. Yes, sir.

Q. Now, I believe you stated that you first saw Mr. Bach lying out on the road?

A. Not on the road, in the borrow pit.

Q. This bus did end up on the borrow pit at the edge of the shoulder? A. Yes.

Q. This road has paving, a dirt shoulder and borrow pit? A. Yes.

Q. And the bus was in the borrow pit when it come to a stop?

(Testimony of Viola B. Tuck.)

A. It was practically in there because it was at an angle.

Q. You say you saw Mr. Bach lying in front of the [56] bus? A. Yes.

Q. In a prone position? A. Yes.

Q. Did you go out to see him?

A. I didn't get out of the bus until all the passengers were off. I didn't go out to see Mr. Bach. There was no front of the bus.

Q. You talked to him from the bus?

A. Yes, sir.

Q. He was still lying on the ground?

A. At the time I talked to him, he had gotten up.

Q. You were still on the bus? A. Yes.

Q. But the whole front of the bus had gone?

A. Yes.

Q. Knocked out?

A. I don't know where it was.

Q. It just wasn't there. His first inquiries were for the passengers, not for himself, but for the passengers?

A. I asked him if there was anything I could do.

Q. And he said, "Are any of the passengers injured?" Is that right? A. Yes, sir.

Q. Then, I believe he told you where the first aid kit was? A. I asked him where it was. [57]

Q. You asked him and he told you? A. Yes.

Q. And then you spent—what would you say, the next thirty minutes taking care of the passengers in the bus?

A. I began to administer aid to them. Somebody

(Testimony of Viola B. Tuck.)

came on the scene with water with cups and they gave them to me for people to take aspirins with.

Q. You were helping the injured?

A. Yes, sir, and also taking the names of the passengers.

Q. Were you still doing that when Captain Salas of the New Mexico Highway Patrol came there?

A. Yes.

Q. You were still in the bus and some of the passengers were there?

A. Some of them had started to get out.

Q. Some had started to get out? A. Yes.

Q. And you didn't get out of the bus until Captain Salas was there?

A. No, sir, I didn't get out.

Q. When you say you observed the skid marks, that was after Captain Salas had arrived, is that right? A. Yes, sir.

Q. And you stated you got out of the bus. Did you [58] make an observation as to the point of impact?

A. After walking around a while, I walked up the highway.

Q. You could see where the Ford and the bus had collided; it was plainly evident? A. Yes, sir.

Q. Where were the left-hand wheels of the bus at the time of the impact with reference to—that would be the south side of the pavement, isn't it? The highway there runs east and west?

A. It is hard to tell; it is not due east and west.

(Testimony of Viola B. Tuck.)

Q. In a general direction, was it running east and west there? A. Yes.

Q. That would be the south side of the pavement. In other words, the right-hand side of the pavement would be the south side of the pavement.

A. Yes, sir.

Q. Where were the left-hand wheels of the bus with reference to the south edge of the pavement?

A. They were on the pavement.

Q. How far on the pavement?

A. I don't know the width of the bus. I would say three to four feet.

Q. Where were the right-hand wheels of the bus at that time? [59] A. On the shoulder.

Q. Off the pavement? A. Yes, sir.

Q. That is at the time of impact?

A. Yes, sir.

Q. And you state that after all—either before or after, whenever it was that you made the observation, the point of impact—you made an observation of skid marks left by this bus?

A. I walked on up the highway.

Q. You say there were skid marks for 300 feet from the point of impact? A. No, sir.

Q. You said one city block. What did you mean by a city block?

A. I didn't say there were skid marks. I said when the brakes were applied to the point of impact. I didn't say skid marks extended that far.

Q. What do you call a city block; 300 feet?

A. Well, taking the length of the courtroom

(Testimony of Viola B. Tuck.)

again, I would say it was four times the length of this courtroom.

Q. Four times the length of this courtroom?

A. Yes, sir.

Q. Did you observe where the bus was after it came to a stop? [60] A. Yes, sir.

Q. You examined the same?

A. Well, I don't know what you mean by examining; the bus?

Q. Well, you looked it over, didn't you?

A. I saw the front of the bus.

Q. You know what the whole picture there looked like? A. Yes.

Mr. Baker: Will you mark these for identification (indicating).

The Clerk: These are marked for identification Defendant's Exhibits A, B, C and D.

(Thereupon the above referred to photographs were marked for the purpose of identification as Defendant's Exhibits A, B, C and D.)

Q. I hand you Defendant's Exhibit A marked for identification and ask you to look at that photograph please, Mrs. Tuck (indicating). Do you recognize that?

A. I can't say that is the wreck.

Q. You can not say? A. No.

Q. You don't recognize that. That looks generally like the highway? A. Yes, sir.

Q. And the surrounding territory there? [61]

(Testimony of Viola B. Tuck.)

A. Yes.

Q. Handing you Defendant's Exhibit B for identification, I will ask you to look at that particularly with the car underneath the bus (indicating).

A. That looks like it as I can remember.

The Court: What is that?

A. That looks like it as I can remember.

Mr. Baker: We offer Defendant's Exhibit B in evidence.

Mr. Carlton: No objection.

The Court: Exhibit B may be admitted.

The Clerk: That is Defendant's Exhibit B in evidence.

(Thereupon the above referred to photograph having been marked for the purpose of identification as Defendant's Exhibit B was received in evidence.)

Q. I hand you Defendant's Exhibit C, marked for identification, and ask you to examine that, please (indicating). A. Yes, sir.

Q. Do you recognize that? A. Yes, sir.

Q. That was the wreck that you were referring to? A. I believe it was.

Mr. Baker: We offer it in evidence.

Mr. Carlton: No objection. [62]

Mr. Baker: This will be what, Mr. Clerk?

The Clerk: Defendant's Exhibit C in evidence.

(Thereupon the above referred to photograph having been marked for the purpose of identification as Defendant's Exhibit C was received in evidence.)

(Testimony of Viola B. Tuck.)

Q. I hand you Defendant's Exhibit D marked for identification, Mrs. Tuck, and ask you to examine that (indicating). A. Yes.

Q. You recognize that? A. Yes.

Q. As the wreck in question? A. Yes.

Mr. Baker: We offer this in evidence.

Mr. Carlton: I have no objection.

The Clerk: Defendant's Exhibit D in evidence.

The Court: It may be received.

(Thereupon the above referred to photograph having been marked for the purpose of identification as Defendant's Exhibit D was received in evidence.)

Mr. Baker: This one is for identification (indicating).

Mr. Carlton: I think we will agree that is the scene.

Mr. Baker: All right, then, we will offer [63] Defendant's Exhibit A marked for the purpose of identification.

The Court: It may be received in evidence.

The Clerk: Defendant's Exhibit A in evidence.

(Thereupon the above referred to photograph having been marked for the purpose of identification as Defendant's Exhibit A was received in evidence.)

The Court: Do you gentlemen want a recess at this time or do you want to go through to the noon hour?

Mr. Baker: I would appreciate a recess.

(Testimony of Viola B. Tuck.)

The Court: You want a recess. Gentlemen, we are about to take a recess of five minutes and I admonish you not to discuss this case amongst yourselves or with anybody else or discuss the case in anybody else's presence. Furthermore, I admonish you not to express any opinion on the merits of this case until the case is finally submitted to you for deliberation. We will now stand at recess for five minutes. You can continue your inspection of the exhibits after recess.

(Recess had.)

The Court: Is it stipulated that all the Jurors are present? Do we have a stipulation that all the Jurors are present?

Mr. Baker: Oh, yes. [64]

Mr. Carlton: Yes, sir.

The Court: You may proceed, Mr. Baker.

Q. Mrs. Tuck, I believe you said that this exhibit you could not particularly identify, is that right? (Indicating.)

A. I don't recall seeing it from the rear.

Q. You don't recall seeing it from the rear end?

A. No, sir.

Q. And you filed suit against the Pacific Greyhound Lines for recovery, if any? A. Yes, sir.

Mr. Baker: That is all.

Re-direct Examination

By Mr. Carlton:

Q. Mrs. Tuck, has the case been disposed of, your case?

(Testimony of Viola B. Tuck.)

Mr. Baker: We object to it; wholly immaterial and irrelevant.

Mr. Fowler: Mr. Baker opened the door.

Mr. Baker: No, he asked it on direct examination, whether she filed a suit.

Mr. Fowler: He opened the door, if the Court please, on cross-examination.

The Court: Well, there was a reference made to the filing of the suit. I think the question arose, "Why did you file suit?" [65]

Mr. Baker: No, they asked her first if she had filed a suit. And that is all I asked.

The Court: To which there was an objection, "Why did you file suit in El Paso?"

Mr. Baker: Started to ask her and I objected to it.

The Court: Your question does not open it up; objection overruled.

Q. Mrs. Tuck, you testified on cross-examination about somebody coming and bringing some water and cups? A. Yes, sir.

Q. Do you know in what direction that car came?

A. The car came from Las Cruces.

Q. Do you know whether or not it was the first car that came, or was there any other one that came before it did?

A. That was the first car that came on the wreck; gave me a bottle of water and paper cups and turned back to Las Cruces.

Q. That was before Captain Salas came?

A. Yes, sir.

(Testimony of Viola B. Tuck.)

Q. Mrs. Tuck, you said that you went to the front of the bus to get the emergency kit?

A. Yes, sir.

Q. First aid kit? A. Yes, sir. [65]

Q. Had the sun set at this time?

A. No, sir, the sun had not set. It was on the horizon.

Q. In what direction was the sun with regard to the highway?

A. Directly down the highway, west.

Q. And a car going west, would it have been facing the sun? A. Straight into the sun.

Q. Did you see the sun; did you make notice of the sun immediately after the accident or was it sometime after that before you noticed the sun?

A. Just as I went to break off the first aid kit, because I was blinded by the sun in pulling off the kit.

The Court: Repeat that over again; I cannot hear you.

Q. Say it over again.

A. In pulling off the first aid kit, which hangs on the driver's side, below his window, my face was directly into the sun.

Mr. Carlton: Take the witness.

Re-Cross-Examination

By Mr. Baker:

Q. Where was this first aid kit; which side of the bus? [67] A. On the driver's side.

Q. That would be the left-hand side?

A. Yes.

Q. On the side of the bus or the front?

(Testimony of Viola B. Tuck.)

A. Yes, sir.

Q. On the front?

A. It wasn't on the front; it was on the side.

Q. It was on the side?

A. It would have been right opposite the driver's seat.

Q. Right opposite the driver's seat?

A. Yes.

Q. When you went to take off that first aid kit, you were facing directly into the sun?

A. The sun was directly on the side of my face.

Q. Directly on the left-hand side?

A. I was bending down. The whole side of the bus was turned down. I had to lean over, the sun was right to the left of my face.

Q. Right to the left of your face?

A. Yes.

Mr. Baker: That is all.

Mr. Carlton: That is all.

The Court: You may step aside. [68]

Mr. Carlton: If the Court please, I will call Captain Salas.

CAPTAIN C. J. SALAS,

called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carlton:

Q. Please state your name.

A. C. J. Salas.

Q. Where do you live, Mr. Salas?

(Testimony of Capt. C. J. Salas.)

A. Las Cruces, New Mexico.

Q. What is your business or profession or employment? A. State Police.

Q. Are you a New Mexico state policeman?

A. New Mexico State Police, yes, sir.

Q. How long have you been a state policeman?

A. Fifteen years and three months.

Q. What is your rank? A. Captain.

Q. Were you living at Las Cruces and stationed in that area on or about the 25th day of March, 1946? A. I was.

Q. Captain, do you recall an accident or collision between a Ford automobile and a Greyhound bus out on Highway 80, west of Las Cruces, in the late afternoon of the 25th of March, 1946? [69]

A. I do.

Q. And did you go out there?

A. Yes, I did.

Q. Do you know who notified you of this accident? A. I was notified by telephone.

Q. And in consequence of that telephone message, did you go out there? A. I did.

Q. About what time was it that you arrived there? A. Six twenty-five.

Q. How far would you say it is from Las Cruces to the point where this accident occurred?

A. Nine miles.

Q. When you got out there, what did you find?

A. I found a Greyhound bus and Ford car and

(Testimony of Capt. C. J. Salas.)

several other cars around at the scene of this accident.

Q. Captain Salas, I hand you Defendant's Exhibit A, and I will ask you to state if you know, or recognize the picture, state what it is (indicating).

A. That is a picture shown of a Greyhound bus, boom truck, coupe and several other vehicles.

Q. That were gathered at the scene of the accident?

A. That were gathered at the scene of the accident.

Q. Captain Salas, did you make those pictures or were they made under your supervision or direction?

A. I don't know about these pictures. I have some [70] pictures taken of my own, at my direction, and I would like to compare them with these.

Mr. Baker: I have no objection; compare them, Captain.

Q. Compare all of them while you are at it, Captain.

A. I don't have this picture here. I don't know where that was taken. This is my picture here showing my police car, myself, the boom truck and the Greyhound bus.

Q. I hand you Defendant's Exhibit C and I will ask you to state what that is, if you know (indicating).

A. That is a Ford car and the front end of a Greyhound bus.

(Testimony of Capt. C. J. Salas.)

Q. Was that picture made by you under your supervision or direction? A. Yes, it was.

The Court: Which picture are you referring to?

Mr. Carlton: Exhibit C, Defendant's Exhibit C.

The Court: All right.

Q. Captain, I hand you Defendant's Exhibit D, and I will ask you to state what that is (indicating).

A. That is the side view of the Ford car, the remains of the Ford car, and the front end of a Greyhound bus.

Q. Was that picture made by you under your supervision or direction (indicating)? [71]

A. It was.

Q. Captain, I hand you Defendant's Exhibit B and I will ask you to state what that is (indicating)?

A. That is the left side of a Greyhound bus and the remains of a wrecked car underneath the bus.

Q. And that correctly represents the situation as you found it and saw it? All these you identified correctly represent the situation as you found it and saw it out there on that occasion (indicating)?

A. Yes, sir.

Mr. Baker: He hasn't identified our A. If he wants to testify about that, you can introduce it; that is your exhibit. It is the same thing except taken at a different moment.

(Testimony of Capt. C. J. Salas.)

Mr. Carlton: Do you have any objection to this (indicating)?

Mr. Baker: No.

Mr. Carlton: Mark this as Plaintiffs' Exhibit 5 for identification, and it is entered by agreement as an exhibit.

The Clerk: You are offering it in evidence by agreement?

Mr. Carlton: Offer it in evidence by agreement.

The Clerk: Plaintiffs' Exhibit 5 in evidence (indicating). [72]

(Thereupon the above referred to photograph having been marked for the purpose of identification as Plaintiffs' Exhibit 5 was received in evidence.)

Q. Captain Salas, did you make an investigation of the wreck and the facts surrounding it that evening, while you were there? A. I did.

Q. Did you get out there before the sun set?

A. It was still light. I believe the sun hadn't quite set when I arrived at the scene of the accident.

Q. Captain, were you able to tell and determine where the point of impact was between the two vehicles?

A. It was on the south edge of the pavement.

Q. Could you tell whether or not the Ford was entirely off of the pavement or was the bus entirely off of the pavement at the time of the impact?

A. The Ford appeared to be off of the pavement from physical marks on the ground.

(Testimony of Capt. C. J. Salas.)

Q. Would you say that the front end of the bus was entirely off the pavement at the time of the impact? A. The front end was.

Q. What would you say about the back end?

A. The back end was not entirely off the pavement.

Q. Were the wheels on the right, the right rear wheels, were they off the pavement?

A. There were no tire marks showing that they were [73] on or off at the time.

Q. How far on the pavement would you say the left rear wheels of the bus was?

A. Approximately four feet.

Q. Captain, when the bus finally came to a stop, did the position which you found it in, when you arrived there, was it entirely off of the pavement and off the shoulder?

A. It was entirely off the pavement, parallel with the highway.

Q. Parallel with the highway?

A. Yes, sir.

Q. Was it in the borrow pit? A. Yes.

The Court: I didn't get that question and answer.

A. It was parallel with the pavement in the borrow pit.

The Court: The "bar pit" is what you referred to?

Mr. Baker: It is technically called "borrow pit."

Mr. Fowler: It comes from borrowed pit.

(Testimony of Capt. C. J. Salas.)

The Court: How do you spell that?

The Witness (spelling): B-o-r-r-o-w pit.

The Court: It is alongside of a shoulder?

The Witness: Yes.

Mr. Carlton: It is from where they took the dirt [74] to build up the side of the road. They "borrowed" the dirt, and that is why they called it the "borrow pit."

Q. Did you make an examination of the bus, and do the pictures that have been introduced here, to which you have testified, do they correctly represent the location of the bus and the condition of the bus at the time you arrived? A. Yes.

Q. Captain, you say that you were able to tell this spot where the impact was. Did you make any measurements to determine how far the bus traveled from the point of impact?

A. 144 feet.

Q. Did you measure that? A. I did.

Q. Was Bach up and around when you arrived, or still on the ground?

A. He was around the bus there, around the passengers there.

Q. Do you know George Rumeh now, don't you?

A. Yes.

Q. You didn't know him prior to that night?

A. No, sir.

Q. Did you see him there when you arrived?

A. There were several people; I couldn't tell who [75] was there and who was not; I couldn't tell.

(Testimony of Capt. C. J. Salas.)

Q. You don't remember seeing him there that night?

A. No, we sent some people in on an ambulance that were hurt, and the rest of the passengers that were hurt, we sent them in on another bus, into Las Cruces into the hospital.

Q. These pictures were made or there were pictures made that evening, after dark? These are flashlight pictures (indicating)? A. Yes.

Q. Several hours after the accident?

A. It was approximately ten o'clock when those pictures were taken.

Q. Referring to the persons that were on the ground in front of the bus at the time you arrived, how far would you say that the farthest person was from the bus out in front?

A. They was two people, man and his wife, which I learned was Mr. and Mrs. Frances, that was about 25 feet ahead of the bus and the car. There was another person lying ahead of them about approximately ten feet difference.

Q. Farther than they were? A. Yes.

Q. Is it your testimony, Captain, that Mr. and Mrs. Frances were a 169 feet from the point of impact? [76]

Mr. Baker: Just a minute; I was talking. Will you read that last question?

(Last question read by the Reporter.)

Mr. Baker: 169 feet?

Q. 144 plus 25?

(Testimony of Capt. C. J. Salas.)

A. Yes, that would be right.

Q. And that there was some other person that would be 179 feet from the point of impact?

A. Yes, sir.

Q. Captain, did you talk with Cody Bach that evening out there? A. I did.

Q. Did you make out an accident report?

A. I did.

Q. And do you have the report that you made out with you?

A. I have a copy of the accident report I submitted.

Q. Is this copy that you have, the copy that you made yourself? A. Yes, sir.

Q. And has it been in your possession all the time since you made it? A. Yes, sir.

Q. Did your report show what distance the bus driver apprehended the danger? [77]

Mr. Baker: Just a minute. If the Court please, we object to that as being wholly immaterial and purely self-serving, what he had down in the report.

Mr. Carlton: Withdraw the question.

Q. In consequence of what Captain Salas told you, did you fill out that report? I mean, Captain Salas, in consequence of what Mr. Bach told you, did you fill out the blanks on that report?

A. I did.

Q. Now, then, what distance does your report show that the driver of the bus apprehended the danger?

Mr. Baker: We object to that as being wholly

(Testimony of Capt. C. J. Salas.)

immaterial and irrelevant. What he put down in the report does not make any difference at all.

The Court: He can refresh his recollection from his report.

Mr. Baker: That doesn't make any difference, what his report said.

The Court: He can testify to what he observed out there and refresh his recollection if he has any notes.

Mr. Baker: That is true, but that is not what he is asking him. He is asking what his report shows, not asking him to refresh his recollection.

Q. Captain Salas, to refresh your recollection, you [78] may examine your report to see how far did the driver observe the danger before—

Mr. Baker: Just a minute; if the Court please, Captain Salas was not there as the time of the accident. He can't testify to such a thing.

The Court: That is calling for a conclusion; that is objectionable.

Q. What did Bach tell you on that subject?

Mr. Baker: Just a minute. That is not a proper impeaching question, if that is the purpose of it. That is not the proper way to impeach him.

Mr. Fowler: It isn't for the purpose of impeachment, if the Court please; it is an admission of an adverse witness.

Mr. Baker: He has not been adverse now.

Mr. Fowler: He is the driver of the bus. It is admissible in interest against Mr. Bach and the Pacific Greyhound Lines.

(Testimony of Capt. C. J. Salas.)

Mr. Baker: You mean any statement of Mr. Bach at that time?

Mr. Fowler: That might be adverse.

The Court: If the statements were made at the time—

Mr. Fowler: At the time it is part of the res gesta.

The Court: I don't know; I wouldn't say about that. This is how long after the accident?

Mr. Carlton: If the Court please, the testimony has been that the accident took place at 6:10, and that he arrived there at 6:25.

The Court: And this statement is on the part of the bus driver, is that it?

Mr. Baker: That is what he is asking for.

The Court: I don't know why—

Mr. Baker: May I ask a few questions on voir dire.

The Court: Yes.

Voir Dire Examination

By Mr. Baker:

Q. What was Bach's condition at the time you got there?

A. He was walking around; complained of a chest injury and I believe the ankle was hurting him.

Q. What was his mental condition?

A. Well, I couldn't say as to that. I didn't examine him.

Q. Well, were his activities such, would you say, that he was under shock at that time?

(Testimony of Capt. C. J. Salas.)

A. Well, he was to a certain extent. He was very much concerned about the accident.

Q. And didn't he insist upon his staying there over your objections? [80]

A. He wanted to stay there when I loaded all the passengers on the other bus.

Q. And made him go to the hospital?

A. Made him go with the driver of this other bus.

Q. In your opinion, his condition was such that he should be sent to the hospital?

A. I wanted to see everybody go to the hospital.

Mr. Baker: We will object on the ground that it wouldn't have any probative force.

The Court: Assuming that he is a representative of the defendant, it seems to me that would be competent evidence.

Mr. Fowler: It wouldn't go to the admissibility, only to the credibility; that is the only question before the Court.

The Court: Objection overruled.

Further Direct Examination

By Mr. Carlton:

Q. All right, state what Mr. Bach told you about the distance that he observed the danger.

Mr. Baker: Just a minute; that calls for a conclusion. You talk about danger. That is not a proper question.

The Court: Objection sustained.

Q. Did you ask him how far he was from the danger at the time he first saw the—— [81]

(Testimony of Capt. C. J. Salas.)

Mr. Baker: We object to that. That question is calling for a conclusion.

The Court: When you state "danger," you are asking for a legal conclusion.

Mr. Carlton: That's right.

The Court: Reframe your question.

Q. Did he estimate how far it was that he apprehended the danger?

Mr. Baker: The same objection, if the Court please. This definitely is calling for legal conclusions of the witness.

The Court: The use of the word "danger" is objectionable in my opinion.

Q. Then I will change the question to say: how far was he when he first observed the oncoming car? A. About three hundred feet.

Q. Did he state to you what the oncoming car was doing that attracted his attention?

A. It was coming down the side of the—on his side of the highway, angling toward him when he first noticed it.

Q. Did you ask Mr. Bach at what speed he was traveling at the time? A. I did.

Q. And what did he tell you?

A. The usual speed. [82]

The Court: What did you say?

The Witness: The usual speed.

Q. Did he give any definite statement as to his speed?

Mr. Baker: Objection to that; trying to lead his witness. He already testified to "the usual speed."

(Testimony of Capt. C. J. Salas.)

Mr. Fowler: Another speed, if the Court please.

The Court: You may ask him if he said anything further.

Q. Did he say anything further on the subject of speed?

A. He stated when he observed this car coming on his side of the road, he started to slow down and pull to the right.

Q. Started to slow down and pull to the right?

A. Yes.

Mr. Carlton: Take the witness.

Cross-Examination

By Mr. Baker:

Q. Captain, Mr. Bach told you that as soon as he observed this car, he started to pull to his right?

A. Yes, sir.

Q. When you got there, arrived at the scene of the accident, what is the first thing you did, Captain Salas? [83]

A. I cleared the road for the ambulance to load these injured passengers on, the ones that were on the ground.

Q. There were cars there at the time?

A. Yes, there were cars parked all over the highway.

Q. Do you have Plaintiffs' Exhibit 5, I believe it will be. Then what is the next step you took, Captain?

A. I got—I talked to Mrs. Tuck as one of the witnesses on the bus.

Q. Where was she, in or outside the bus?

(Testimony of Capt. C. J. Salas.)

A. When I talked to her, she was outside the bus.

Q. Then what else did you do?

A. I also talked to Sergeant Boone.

Q. Outside of talking to people, what else did you do?

A. Then on, I saw that all passengers were loaded in this other bus that arrived in the meantime; checked for the baggage of the different passengers and cleared the scene of the accident.

Q. How long was it before you started making measurements in your observations at the scene of the accident?

A. As soon as we cleared the passengers out, I took my measurements. [84]

Q. You say you could clearly determine the point of the impact? A. Yes, sir.

Q. I am handing you Defendant's Exhibit A, Captain Salas, and also Plaintiffs' Exhibit No. 5 (indicating). You caused Plaintiffs' Exhibit No. 5 to be taken? A. Yes, sir.

Q. You compare the two and see if there is any difference outside of the fact that there were different cars, different people standing there.

A. That is the only difference.

Q. That is the only difference. Insofar as the condition of the highway is concerned, any marks, they are all the same? A. Yes, sir.

Q. With that in mind, let us use Plaintiffs' Exhibit A to aid in that it is larger and easier to be seen. And will you point and turn to the Jury

(Testimony of Capt. C. J. Salas.)

so that they can see. Show the point of impact between the Ford and the bus.

A. It was right in here, at the end of the pavement (indicating).

The Court: Will you mark that?

Q. Is there a black mark to indicate it, the black mark on the pavement?

A. The black mark on the pavement is a tire skid [85] mark.

Q. Point that out, please.

(Thereupon, the witness followed instruction.)

Q. That is a tire skid mark? A. Yes.

Q. Right on the edge of the pavement?

A. Yes.

Q. Was that the point of impact?

A. Right on the edge, further off the pavement, where the impact was.

Q. How far is that skid mark?

A. Just on the edge of the skid mark.

Q. How far was that from the south edge of the pavement, the point of impact?

A. The point of impact was right at the edge of the pavement.

Q. Right at the edge of the pavement?

A. Right at the south edge of the pavement.

Q. This skid mark was how long?

A. I didn't measure that skid mark there.

Q. Would you estimate how long it was?

A. It was about five feet long.

(Testimony of Capt. C. J. Salas.)

Q. That was your estimate? A. Yes, sir.

Q. The skid marks pretty closely indicate the scene—the exact point of impact, doesn't it? [86]

A. Yes—no, it shows where the tire skidded there. The impact was right at the end of the pavement.

Q. You are pointing now at the edge of the pavement? A. Yes.

Mr. Baker: Will pen show?

Mr. Carlton: No.

Q. Mark with an "X" the point of impact.

(Thereupon, the witness followed instructions.)

Q. And does that also indicate the edge of the pavement? A. Yes.

Mr. Baker (addressing the Jury): Can you gentleman see that blue mark?

Q. So that blue "X" indicates exactly where they collided?

A. The point of impact, yes, sir.

Juror Phillips: May I ask a question: the edge of the left side of the bus or the right of the bus?

Mr. Baker: I will clear that up in a few minutes.

The Court: Just a moment; did you say something?

Mr. Fowler: I want to say, if he knows; it is a matter of argument for the Jury.

The Court: Yes.

Q. From your observations there, could you de-

(Testimony of Capt. C. J. Salas.)

termine [87] whether or not the left front wheel of the bus was on or off the pavement?

Mr. Baker (addressing the Juror): I think that is what you wanted to know?

The Court: Is that your question?

Mr. Baker: Yes.

A. It would be hard to tell whether the left wheel was on the pavement at the time, on account of the bus's front wheel set further back than the front end of it.

Q. But would the left front wheel of the bus have been very close to the edge of the pavement?

A. Yes.

Juror Phillips: Would the skid marks be made by the left front wheel or—

A. It shows on this picture tire marks back of that skid mark where the brakes were being applied, but they weren't skidding. From the edge of the pavement to where it stopped, the wheels were turning. It showed on the dirt the wheels were turning. The marks where the car as being dragged at the head of the bus (indicating).

Q. At the time of impact, could you locate or determine the rear of the bus, estimate where it was? A. Part on the pavement.

Q. Part off? [88]

A. You couldn't tell what angle it was coming off the pavement.

Q. You couldn't tell; part of it was off of the pavement? A. Part off.

(Testimony of Capt. C. J. Salas.)

Q. Part off and part on the pavement, the rear? A. Yes.

Q. As to the front end of it, not off the pavement, was on the pavement, the left front wheel?

A. Yes.

Q. The skid mark that is shown on the picture is only about five feet long?

A. That's right.

Q. That indicated—could you tell whether it was made by the bus or by the Ford?

A. It was made by the bus.

Q. Did you make any examination to determine whether the Ford had ever applied its brakes or attempted to stop its car?

A. No skid marks showed on the pavement from the other car whatever.

Q. No marks whatever from the Ford car?

A. No.

Q. From your experience as a highway patrolman, would you say that Ford car ever applied its brakes or ever made an attempt to stop? [89]

A. I couldn't say as to that; that is one thing we will never know.

Q. At least you found no indication on the highway whatever? A. No.

Q. That that Ford car ever made an attempt to stop? A. No, sir.

Q. I believe you identified these other three pictures which are Defendant's Exhibits B, C, and D in evidence, Captain Salas (indicating).

A. Yes, sir.

(Testimony of Capt. C. J. Salas.)

Q. From those pictures and from your observation at the time at the scene of the accident, what was the condition of the front end of the bus caused by the impact?

A. It was all carried underneath the bus.

Q. Did he have any brakes whatever after the impact? A. No, sir.

The Court: Did who?

Mr. Baker: I mean the bus.

A. I don't think he had any brakes because the wheels were rolling on the dirt.

Q. From the condition of the front end of the bus, would you say that all his brakes were knocked out by the impact?

A. When that took place, all his brakes were knocked [90] out.

Q. When I refer to that, I refer to the driver of the bus; all his brakes were knocked out?

A. Yes.

Q. After the impact it rolled free?

A. Yes. From the point of impact to the front end of the bus, it was 144 feet.

Q. It was rolling free without any brakes?

A. Yes.

Q. What was the weight of that bus?

A. I was told it was 18,000 pounds.

Q. From your own experience, you know what those weights are? A. Yes.

Q. That is an 18,000 pounds bus?

A. Yes. I asked the weight of the bus.

Q. Was that unladen?

(Testimony of Capt. C. J. Salas.)

A. That is empty weight.

Q. Do you know what the weight of that Ford car was?

A. It is of about 3100 pounds; 3100, 3200 pounds.

Q. That is the approximate weight of a Ford car?

A. Yes, that is unladen weight.

Q. Unladen weight on the Ford? A. Yes.

Mr. Baker: I think that is all. [91]

Mr. Carlton: If the Court please, I would like to ask another question of the Captain.

The Court: You may.

Redirect Examination

By Mr. Carlton:

Q. Captain, how wide is the pavement at that point? A. Twenty-one feet.

Q. How wide are the shoulders?

A. Six feet on each side before they start sloping.

Q. What is the character of the materials used in making those shoulders?

A. Well, they use caliche and gravel.

Q. Captain, what was the speed limit in New Mexico on the 25th day of March, 1946?

A. Forty-five miles per hour.

Q. State whether or not there are signs posted on that highway between Las Cruces and Deming announcing the speed limit? A. There are.

Q. Do you know what those signs state?

A. "Forty-five miles per hour for your protection."

Mr. Carlton: That is all.

The Court: Come down, Captain.

You require this witness any further?

Mr. Baker: Yes, we may.

Mr. Carlton: Would the Court care for me to put [92] on another one? I am ready if you——

The Court: Well, we can continue for ten minutes longer.

Mr. Carlton: Lieutenant Jones, come up please.

The Court: Unless the Jury is getting hungry.

Mr. Baker: My high blood pressure can continue.

LIEUTENANT HOWARD JONES,

called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Carlton:

Q. Please state your name.

A. Howard Jones.

Q. Where do you live, Mr. Jones?

A. El Paso, Texas.

Q. What is your business, occupation or profession?

A. I am a traffic engineer, engineer and safety director in the El Paso Police Department.

Q. How long have you held that position?

A. For the past two years.

Q. What is your rank in the El Paso Police Department? A. I am a Lieutenant.

(Testimony of Lieutenant Howard Jones.)

Q. What preparation have you had for the particular work that you are doing?

A. I am a graduate of Northwestern University [93] Traffic Institute.

Q. When did you graduate?

A. I graduated June 19, 1946.

Q. Lieutenant Jones, explain to the Jury just what your duties are and what is meant by your job and title.

A. In traffic engineering I work rather closely with our Accident Prevention Bureau and do most of the statistical, analytical work in that division, and I also do their technical work, such as skid marks formulas and things pertaining to that, and braking distances of automobiles. I figure those formulas out for them.

Q. That is the formula or science of rule by which the speed of automobiles can be determined, based on the skid marks?

A. Yes, sir, there is.

Q. Did you study that in Northwestern?

A. Yes, sir.

Q. That was a course that you took at Northwestern University? A. Yes, sir.

Q. Is there a rule by which you are able to determine how far and what distance a given car would stop at a given speed? A. Yes, sir. [94]

Q. Lieutenant, what did you mean—what is meant by the term “braking efficiency”?

A. “Braking efficiency” means the amount of heat that is created in a brake drum to bring it up

(Testimony of Lieutenant Howard Jones.)
to the point where the coefficient on the pavement
to make the car start skidding and burn rubber.

Q. Can you use any other term instead of "coefficient," so that the Jury might understand?

A. You might term it as "friction" or "resistance."

Q. Is the resistance on the pavement or is it
resistance in the drum?

A. Well, sir, the resistance in the drum has
to be built up higher than the actual pavement
resistance to make the car skid.

Q. When you speak of the resistance efficiency
in the drum, is that what you are talking about,
braking efficiency? A. Yes, sir.

Q. Explain to the Jury what is meant by "gripping" efficiency.

A. You mean "gripping efficiency" of the pavement?

Q. Yes.

A. Well, the gripping efficiency of any pavement
is determined by the amount of energy or force
that is created when a vehicle is skidding, divided
by the weight of the vehicle. That determines
what the frictional resistance of the pavement is.

Q. Do you have figures or estimates by which
you measure braking efficiency of the car and grip-
ping efficiency of the road? A. Yes, sir.

Q. In points of difference, suppose that the grip-
ping efficiency on the road was lower than the brak-
ing efficiency on the drum, would a car skid?

A. I would like to deal with that more in round
figures.

(Testimony of Lieutenant Howard Jones.)

Q. Go ahead and explain, if you understand, so that the Jury can understand it.

A. If the braking efficiency of a vehicle—we will say that the brakes will control seventy-five per cent of the weight of that car, actually that is what the braking efficiency means. If the coefficient friction or frictional resistance on the pavement is eighty per cent, that would be an exceptionally good pavement. If it is concrete, asphalt, macadam, it is good surface. If it is eighty per cent you get enough to skid your vehicle because you would have to create more braking efficiency, higher per cent, to make your vehicle skid.

Q. At any time if you saw your car skid, what does that mean as to the braking efficiency of the car?

A. That means that the braking efficiency of the [96] car is higher than the frictional efficiency of the pavement.

Q. How long have you lived in El Paso, Texas?

A. Over eleven years; just shortly over eleven years.

Q. Are you acquainted with Highway 80 between Las Cruces, New Mexico, and Deming, New Mexico? A. Generally, yes.

Q. Have you ever been over that highway?

A. Yes, sir.

Q. One time or many times?

A. Quite a few times.

Q. Do different highways, or do the types of

(Testimony of Lieutenant Howard Jones.)
pavement vary as to the griping efficiency of a tire
on that surface? A. Yes, sir, they do.

Q. Are you sufficiently acquainted with the
character of the road between Deming and Las
Cruces approximately eight or nine miles to the west
of Las Cruces to the point where you can give us
an opinion as to the character of the road, how it
would react to brakes?

Mr. Baker: Just a minute; I don't know ex-
actly what he is talking about. Nevertheless, it at
least would be wholly immaterial what the road is
today.

Mr. Fowler: In March, 1946. [97]

The Court: What time do you refer to?

Mr. Carlton: I will make it March, 1946.

Mr. Baker: If he knows.

Mr. Carlton: If he knows.

A. I couldn't say if I know it as of that date.
I was in Northwestern studying at that time.

Q. Would you know it prior to that date?

A. Yes.

Q. What would you say it is now; the same as it
was prior to that date?

A. Just about the same.

Q. I think you can answer it. Go ahead and an-
swer it.

A. Well, I would say it is my opinion that that
asphalt paving would have a coefficient friction of
about seventy-five per cent.

Q. Would that be high or low for pavement?

(Testimony of Lieutenant Howard Jones.)

A. That is considered good.

Q. Then, if there is testimony that the wheels skidded on there, the vehicle by which those marks were made, would have a braking efficiency of higher than seventy-five per cent? A. Yes, sir.

Q. Lieutenant, in your course of study and in preparation for the work that you have been doing, have you qualified yourself to have an opinion or a [98] knowledge of brakes on different kinds of cars?

A. Yes, sir, I have.

Q. Have you studied the mechanical brake?

A. Yes, sir.

Q. The hydraulic brake? A. Yes, sir.

Q. The air? A. Yes, sir.

Q. Would a car, a light car and a heavy car, modern, would it brake at the same time or what would be the difference in which it would brake?

Mr. Baker: Wait a minute; wait a minute: let us—that is wholly unintelligible to me. Does the Court understand it?

Mr. Fowler: Yes.

The Court: Well, reframe your question. I don't quite understand it myself.

Q. Do you now approximately how much a Buick automobile weighs, for instance, a Roadmaster.

A. No, sir, I don't know the approximate weight.

Q. Do you know how much a Chevrolet weighs, a Fleetline?

Mr. Baker: We object to that.

The Court: That is qualifying the witness.

Q. Let me frame the question this way: is this—

(Testimony of Lieutenant Howard Jones.)

[99] suppose a car weighs 4,000 pounds and another car weighs 3,000 pounds, is there a scientific principle used in the building of those cars that would make those cars, regardless of weight, stop in the same distance, or approximately the same distance, under the application of the brake?

A. Yes, sir, there is.

Q. Explain that to the jury, how that is worked out, if you do know; I don't.

A. Well, gentlemen, all of the automotive manufacturers and trailer manufacturers support a fund or Automotive Safety Foundation. This Foundation works out generally most all the safety principles that are incorporated in automobiles, and in doing that they build the brake drums of an automobile that are heavier, they build that brake drum with more square inch of space to compensate for that extra weight which would make that car, regardless of weight, if they were engineered on safety principles, it would make that car, if the car weighed two tons or 20 tons, it would stop the same distance, because the compensation is in the brake drum. They make more surface for the brake drum, which would create more heat in relation to each other.

Q. When you say more area in the brake drum, do [100] you mean that the drum might be larger in circumference, or the brake drum would be wider on the trailer?

A. It might be wider and also the circumference greater.

Q. On a large vehicle of 18 tons, what kind of

(Testimony of Lieutenant Howard Jones.)

drum would you have, a small or large one; what kind of brake drum would you have?

Mr. Baker: The Lieutenant will admit there is no 18 tons on the highway.

Q. 18,000 pounds.

A. Well, as I stated before, the brake drums would have to be built comparable to the weight.

Q. Now, Lieutenant, if the vehicle is equipped with hydraulic brakes, is it built with greater efficiency for braking purposes than if it were mechanical brakes?

Mr. Baker: We object to that; no testimony of hydraulic brakes.

Mr. Carlton: I am testing the witness' knowledge on the matter so that I can qualify him as an expert.

The Court: He may answer as a matter of qualification.

A. Well, as most of you gentlemen know, that the old mechanical brakes were not of adequate force, because they could not create power equally on all [101] drums and create the natural amount of heat to stop.

Mr. Carlton: May I withdraw that question?

The Court: Yes.

Q. I would like to ask you about mechanical and air—

The Court: We will take a recess. Gentlemen, do not discuss this case amongst yourselves or discuss it with anybody else or allow it to be discussed in your presence. Furthermore, you are not to discuss this case until the case is finally submitted to you. We will recess to one-thirty or two o'clock.

Mr. Baker: I prefer two o'clock, if the Court please.

Mr. Carlton: One-thirty; whatever satisfies the Court, we will be back here then.

The Court: How many more witnesses will you complete today?

Mr. Hall: Your Honor, we will have two doctors.

The Court: I think we will come back at 1:45. Court is recessed.

(Thereupon Court adjourned at 12:10 o'clock, p.m., and convened at 1:45 o'clock, p.m.)

Afternoon Session

The Court: Will you gentlemen stipulate that all the jurors are present?

Mr. Carlton: Yes, your Honor. [102]

Mr. Fowler: May it please the Court, two of the jurors spoke to me just now—not about this case—

The Court: They want to vote?

Mr. Fowler: One lives in Tombstone and one in Douglas. They haven't voted. They had to leave there before they could vote. Mr. Baker said it is all right if they want to vote.

Mr. Baker: Your Honor, I have no objection. I don't want to keep them from voting. They may vote Democratic if they like.

The Court: Well, is there any way of telling how much time is required of the witnesses? Can it be possibly finished? We might put our time in profitably by putting in our instructions.

Mr. Baker: I will be glad to do that.

Mr. Hall: Your Honor please, I asked a couple

of local doctors to be here at two. I don't see them here now. I thought we might go ahead here for an hour, perhaps finish this witness and the two doctors, and then I believe these gentlemen would have time enough to go home, if they had cars.

The Court: Who's the juror from Douglas?

The Clerk: He doesn't want to go back. He can't make it.

Mr. Carlton: Who is the other gentleman?

The Clerk: The other gentleman from Tombstone, is that right? You can get there within an hour or [103] two hours?

The Juror: Two hours, safe driving.

The Court: You have got to get there before six?

The Juror: I think about an hour and a half.

The Court: Well, if we let you go by three, can you make it?

The Juror: Four-thirty will be all right for me.

The Court: How can you get there by six?

The Juror: An hour and a half, I can get there.

The Court: As long as the juror from Tombstone doesn't want to go, we can work on till three-thirty and then we can spend our time profitably going over the instructions.

Mr. Carlton: May it please the Court, may I proceed?

The Court: Yes.

LIEUTENANT HOWARD JONES,
a witness called on behalf of the plaintiffs, having
been previously sworn, resumed the stand and testi-
fied as follows:

Further Direct Examination

By Mr. Carlton:

Q. Lieutenant Jones, I believe I was asking you
about hydraulic brakes and air brakes. Are they
built on the same theory or what is the theory of the
[104] two?

A. Well, they are comparable braking forces.
They are just using different substances to stop
vehicular movement. The air brake forces the ap-
plication of the brake and bands shoot against the
drum to create friction; and hydraulic brakes, they
use oil to accomplish the same purpose. They are both
comparable forces.

Q. They would be equivalent under other circum-
stances? A. Yes, sir.

Q. Are you acquainted with—

Mr. Carlton: May I have the pictures, please?

Q. I hand you Defendant's Exhibit B and ask
you to state what that is (indicating)?

A. Well, apparently it is a bus and demolished
automobile.

Q. Are you acquainted with that type of bus?

A. Yes, sir.

Q. Do you know whether that type of bus is
equipped with air or hydraulic brakes?

A. I understand they are equipped with air.

Mr. Baker: We object to what he understands,
unless he knows.

(Testimony of Lieutenant Howard Jones.)

A. Well, they are equipped with air; no question about it, that is what they are equipped with. [105]

Q. All right. Do you know whether that type of bus is equipped with dual wheels on the rear?

A. Yes, sir.

Q. With dual wheels on the rear, is the braking efficiency increased, will the bus stop quicker and in a shorter distance after the brakes are applied than if it had one wheel on the rear?

A. Well, it would make it stop quicker.

Q. Do you have a formula for working out that matter, the difference between dual wheels and single wheels? A. No, sir, I don't have the formula.

Q. Do you have a formula for figuring out the distance at which a given vehicle can be brought to a stop if you know the character of the road that it is on and the type of vehicle that it is?

A. Yes, sir.

Q. Explain how that formula works. Now, take your time so that the jury can understand it.

A. Well, gentlemen, we have a formula that we work on that is based on a practical observation. We take a vehicle, any vehicle that has good brakes, on a good road. That doesn't mean the best; say seventy-five per cent of the brakes will control seventy-five per cent of the weight of the car and the same equivalent on the pavement. You can take [106] an automobile, go along, set your brakes to stop, and you will stop and your braking distance is twenty feet. It may vary one foot less or one foot more. That depends on the efficient of the automobile, whether it is higher or down low. We know at twenty

(Testimony of Lieutenant Howard Jones.)

miles per hour the braking distance is twenty feet. That doesn't necessarily mean the car will skid twenty feet on the ground, because it takes a matter of two, three, five feet to create the adequate pressure to cause that car to go sliding; that is including the brake; that is from the time the brake pedal is hit and the vehicle comes to a stop. The physical theory is, that governs that, that the braking distance of the vehicular force as to the square of the speed. By that you can stop at twenty feet at twenty miles per hour, but at forty miles per hour you can not stop at forty feet, because forty miles per hour is twice as fast as twenty miles per hour. So you must square that space. That is, if this goes faster, you would square your 2, which would be 4, that means that it would take you 4 times as long to stop at 40 miles per hour as at 20. Consequently, you would have a braking distance at 80 feet at 40 miles per hour. Should it go up to 60, 60 is three times as fast as 20, and you square your feet and make it 9 and multiply [107] at 20 miles per hour, at 180 feet to stop at 60 miles per hour. It is based on the dissipation of energy. At a given speed of 30 miles per hour, if your car, the energy you create, it makes no difference whether it is a 20-ton vehicle or a 5-ton vehicle, in 20 miles per hour you create energy in that vehicle to raise it directly in the air 20 feet. That is one of the physical facts we base this on.

Q. Is that an accepted brand of the men throughout the country? A. Yes.

Q. Have you qualified in Court as an expert witness? A. Yes, sir, I have.

(Testimony of Lieutenant Howard Jones.)

Q. What courts have you qualified in?

Mr. Baker: We object to that.

Mr. Fowler: Unless you admit his qualifications—

Mr. Baker: I object to that. I don't care how many times or how many courts he has testified in, it wouldn't make any difference what court he testified for or what judge.

The Court: I think he has been qualified.

Q. Mr. Jones, in your study, state whether or not you have a rule covering the time reaction of a driver? A. Yes, we do have. [108]

Q. What is that rule?

A. We have tried many tests by use of mechanical vehicles, such as having a simulated automobile steering wheel, brake pedal, gasoline accelerator, and you have a multiple number of lights on a switch-board, twenty or twenty-five lights and they are worked on a circuit switch, where you can make all these lights come on at one time. All of them are amber and green, one red light. And when that red light comes on, the person who is simulating the driving of the vehicle, takes his foot off and goes on to the brake, and usually we find that to be three-quarters of a second. I have seen one man out of 200 tests that can do it in half a second. They figure the general average is three-quarters of a second to get your foot from the accelerator on to the brake after your mind first thinks it and gets it to your hands and feet.

Q. If a car is driving at the rate of 50 miles per hour, how fast is that car traveling per second?

A. Well, I would have to figure that out.

(Testimony of Lieutenant Howard Jones.)

Q. Could you do it there in a minute, please?

A. Yes, sir, just generally I would say 70 feet per second; that is going into the middle of time.

Q. Three-quarters of a second—if he would travel three-quarters of a second, the driver— [109]

A. That's right.

Q. In one second's time? A. Yes, sir.

Q. In three-quarters of a second's time—I beg your pardon. Mr. Jones, I believe you said that you are acquainted with the type of bus there that is shown in the Defendant's Exhibit B?

A. Yes, sir.

Q. It is admitted that that bus is equipped with air brakes? A. Yes, sir.

Q. It is admitted that that bus has dual wheels on the rear? A. Yes, sir.

Q. There is testimony to the effect that the brakes on that bus were applied at a distance approximating a city block. The evidence does not clearly indicate that those brakes were held and were applied continuously after they were once applied, but assuming that the brakes were applied at a distance of a city block from the point of impact, do you have an opinion—and the evidence further shows that approximately a city block from where the brakes were applied that there was a collision between a bus that weighed 1,800 pounds and a Ford automobile—18,000 pounds and a Ford that weighed approximately [110] 3,100 pounds and that the Ford was crushed underneath the front of the bus, and that the point of impact was slightly on the pavement, or it might have been just a little off the pavement on a rock and gravel shoulder, and that the bus at the

(Testimony of Lieutenant Howard Jones.)

point of impact carried the Ford with it for a distance of 144 feet. The evidence further shows that after the point of impact, that the driver of the bus and two other persons were thrown approximately 169 feet from the point of impact, and one person was thrown 179 feet from the point of impact. Do you have an opinion, based on that evidence, as to what the speed of that bus was immediately prior to the application of the brakes, in the original application of the brakes?

Mr. Baker: Just a moment.

Q. Now, just "yes" or "no" whether you have an opinion.

Mr. Baker: I want the question read first.

Mr. Carlton: All right.

(Last question read by the reporter.)

Mr. Baker: If your Honor please, we will object to that hypothetical question on the basis that it does not state the facts of the evidence. There is no evidence that the brakes were applied the distance of a city block, which we will assume was 300 feet, to the point of impact, and were kept applied until [111] the time of the impact. No evidence of anybody being thrown a 179 feet from the point of impact. The evidence is that the bodies were found so many feet in front of the bus.

The Court: What difference does it make about these bodies having been thrown? That is not part of the question insofar as the determination of speed was concerned. I don't see that that would make any

(Testimony of Lieutenant Howard Jones.)
difference any more than it would be if this automobile were crushed.

Mr. Hall: It might not have anything to do with the braking efficiency, but the fact that the bodies were thrown 179 feet would be evidentiary of how fast the vehicle was traveling at the point of impact. He is qualified as an expert.

The Court: He is qualified as an expert as to speed, assuming certain factors as stated, the weight of your bus, and assuming, and all of that, and assuming that the brakes were applied.

Mr. Hall: I don't think, so far as I am concerned —we can eliminate that phase of it from the hypothetical question, but I think that the rest of the question is all right. The question was put, that if he had applied his brakes from a city block. We don't contend there is any evidence that he did, but it is our contention that he should have; therefore [112] the hypothetical question is all right.

The Court: I don't think counsel is quarreling with that feature.

Mr. Baker: Yes, there is no evidence that he applied the brakes from a city block and that he kept the brakes applied. There is no such evidence.

Mr. Hall: There is evidence from Mrs. Tuck that the brakes were applied at a city block.

Mr. Baker: And then released.

Mr. Hall: But that is neither here nor there. It is our contention, where would the bus have stopped had he applied the brakes at that point and had he kept the brakes applied until the point of impact. We are not contending that—

(Testimony of Lieutenant Howard Jones.)

Mr. Baker: This question is wholly improper. They might make a proper question from this expert, assuming that they applied the brakes from a certain point and kept the brakes applied, how soon could he have stopped. That is an entirely different question.

Mr. Fowler: That's right.

Mr. Baker: I'm sorry, I tried to correct you.

The Court: I think counsel is correct.

Mr. Fowler: We can eliminate the throwing of the people, if that is objectionable.

Mr. Baker: Then are you going to put a question to him to this effect, or assuming the question that [113] the brakes were applied a city block, 300 feet, and kept applied for 300 feet, and ask him how fast he was going. To answer that question would be 300 miles or 250 or something.

Mr. Fowler: Mr. Baker assumes a city block to be 300 feet. I don't know what a city block is.

Mr. Baker: She said four times the length of this courtroom.

Mr. Fowler: This courtroom is about 60 feet to the hallway.

Mr. Baker: I would say sixty feet.

Mr. Fowler: Somewhere between 250 and 300 feet. Then, the witness could testify how soon the bus could have stopped within that time if the brakes had been applied from 200 feet.

Mr. Baker: No, there is no evidence of 200 feet.

Mr. Hall: I beg to differ with counsel. The witness testified four times the distance of this courtroom. I think it is fifty feet; that is four times fifty feet or

(Testimony of Lieutenant Howard Jones.)
200 feet. In that question I would like to substitute
200 feet. A city block is too indefinite.

Mr. Baker: I object to that. [114]

Mr. Hall: She said the length of this courtroom.

The Court: It won't take too long to estimate it.

Mr. Baker: May the Bailiff estimate it; maybe
he knows. Ask him.

Mr. Fowler: I estimate 50 feet.

Mr. Baker: I object to that. You can't take 200
feet.

The Court: Do you want to step it off; is it im-
portant enough for that?

Mr. Baker: It isn't too important for me. They
are asking the question, not me.

Mr. Hall: I would be glad to step it off.

Mr. Baker: I will take the Bailiff's word for it,
if he knows.

The Court: Let him whisper it to you and see if
you will agree on it.

Mr. Baker: I will take his word for it. Sixty-
five feet, he said.

The Court: Now then, four times 65 is 260 feet.

Mr. Hall: We will substitute 260 feet for a city
block in that question and the Court feels, I think,
it embraces the fact in the—

Mr. Baker: You better rephrase the question
about the bodies flying. [115]

Mr. Hall: We also withdraw the portion of the
question which has to do with the bodies.

The Court: Let me suggest this to you. I think
for the purpose of the hypothetical question, you can

write out a question that will state both sides, or satisfy both sides.

Mr. Baker: Then take a few minutes recess and write it out.

The Court: That then will be satisfactory because some elements are not in accordance with the facts.

Mr. Hall: I will tell you what we might do; we have two doctors here—I don't think Mr. Carlton will be interested in those questions. If we put the doctors on, we can withdraw Mr. Jones.

Mr. Carlton: May I be excused from the court-room?

The Court: Yes.

Mr. Hall: I will call Doctor Thomas.

DOCTOR N. K. THOMAS,

called as a witness on behalf of the plaintiffs, being first duly sworn was examined and testified as follows:

Direct Examination

By Mr. Hall:

Q. State your name, Doctor. [116]

A. N. K. Thomas.

Q. Where do you live?

A. Tucson, Arizona.

Q. What is your business?

A. Physician and surgeon.

Q. Licensed to practice in the State of Arizona, Dr. Thomas? A. Yes, sir.

Mr. Baker: We will admit his qualifications, then.

Q. Do you know a Mrs. Bertha Lucille Rhodes,

(Testimony of Doctor N. K. Thomas.)

who sits beside me (indicating.) A. I do.

Q. Did you have occasion in the past to treat her professionally? A. I have.

Q. When? A. On June 26, 1947.

Mr. Baker: What date was that?

(Last answer read by the Reporter.)

Q. Did you have occasion at that time to take x-ray pictures of her? A. I did.

Q. Do you have those x-ray pictures with you?

A. Yes.

Q. How many do you have, Dr. Thomas? [117]

A. Two.

Q. May I have them, please?

A. Yes (handing same to counsel).

Mr. Hall: Would you mark these for the purpose of identification (indicating)?

The Witness: No, I have three.

Mr. Hall: I wonder how we should mark our exhibits. I suppose as if they were one plaintiff?

The Court: Are these exhibits here being used as—

The Clerk: Yes.

Mr. Hall: Yes, I think so.

Mr. Baker: That wouldn't make any difference to the Judge. The evidence will identify it to your own client anyway.

The Clerk: That will be Plaintiffs' Exhibit 6, 7 and 8 for identification.

Mr. Hall: Thank you.

(Thereupon the above referred to x-rays were marked for the purpose of identification as Plaintiffs' Exhibits 6, 7 and 8.)

(Testimony of Doctor N. K. Thomas.)

Q. I hand you Plaintiffs' Exhibit 6, Doctor, and ask you to state if you took that x-ray picture (indicating)? A. If I took it personally?

Q. Or did you supervise the taking of that picture? [118]

A. This picture was taken by the regular x-ray technician employed by the Clinic.

The Court: Just a little louder please.

Mr. Baker: If you prove that it was taken under his supervision, I won't object to that ground.

Q. Doctor Thomas, you are connected with what clinic here? A. Thomas-Davis Clinic.

Q. That clinic was established by your father many years ago? A. Yes, sir.

Q. You have been connected with that institution how long? A. Since August 15, 1940.

Q. As a member of that institution and one of the owners, Dr. Thomas, do you supervise and have charge of the taking of x-rays in the x-ray department in the Clinic? A. Yes.

Q. Was this Plaintiffs' Exhibit 6 taken under such supervision? A. It was.

Mr. Hall: I offer it in evidence.

Mr. Baker: We object to it, not on the grounds of its identity, but on the ground that this x-ray was taken on June 26, 1947; that is a matter of a [119] year and three months from the time of the accident; no evidence showing that any condition that existed at that time would be applicable to the accident.

Mr. Hall: If the Court please, I wanted to call these doctors out of order. Perhaps we could have

(Testimony of Doctor N. K. Thomas.)

had Mrs. Rhodes testify, which I am sure, and I will avow that I will connect the testimony up with the accident. If I may, I think they are admissible to show her condition at that time. I think the x-ray pictures I have taken today would be admissible at the present time if they were connected up with the accident, and I propose to do that with Mrs. Rhodes' testimony.

The Court: I think that is true, if they were connected up.

Mr. Baker: That would be true, if they were connected up. Ordinarily I don't have that objection. This is a year and three months. I wouldn't confess her condition was the same a year and three months after.

Mr. Hall: It is my contention that we can connect it up.

The Court: Come forward and we will discuss it.

(Counsel and Court confer at the bench as follows:)

The Court: The damages not only contemplate [120] pain, suffering, but not only the disability that happened at the time but in the future.

Mr. Baker: That is correct.

The Court: If this has at least something to do with the future—

Mr. Baker: But a picture taken one year and three months after the accident doesn't show what might have happened at the time of the accident.

The Court: That may be true, but counsel says he will connect it up with her.

(Testimony of Doctor N. K. Thomas.)

Mr. Baker: I don't know how he can do that.

Mr. Hall: Here is what she will testify to; she will testify that her back was injured for some time and she kept letting it go and did not go to a doctor for a long time, and finally she went to a doctor, went to several, and found a condition in her back; the vertebrae had slipped and she said she had been suffering ever since the date of the accident and still does today. Now, that is the situation; for a long time she didn't go to a doctor.

Mr. Baker: She will testify?

Mr. Hall: She will testify.

The Court: Are those the only x-rays taken?

Mr. Hall: The only ones. She is a rancher's wife and has lived in the desert country and is a kind of a woman who never came to town and saw doctors. [121] I think it is admissible.

The Court: It is admissible up to that. It may not be worth much.

Mr. Baker: I object to all these back injury cases.

The Court: I am not suggesting that you should withdraw your objection. You can make whatever objections you wish. That is your privilege.

Mr. Hall: I think as to the credibility, that is something to argue.

The Court: I think that is admissible. Suppose for example, if she had been examined to see what her condition was on the day of trial, that has often been done. I had it done many times.

Mr. Baker: But you identified it up to that date?

Mr. Hall: That is what I want to do.

(Testimony of Doctor N. K. Thomas.)

The Court: If it is not connected up, you can make your motion to strike.

Mr. Baker: I will still object.

(Counsel returned to their seats.)

The Court: The objection is overruled. You may proceed.

Q. May I have that x-ray, Doctor? Doctor Thomas, will you step up to this x-ray board or x-ray machine—[122] I don't know what you people would call it—

The Court: I might say, Mr. Baker, if this evidence is not connected up, the showing is made subject to your motion is all right.

Mr. Baker: Thank you.

Q. Now, Doctor Thomas, you say this x-ray was taken of Mrs. Rhodes, one of the plaintiffs in this case, back in June of 1947?

Mr. Baker: March, 1947—no, June.

Q. June, 1947? A. June, 1947.

Q. Your answer is "yes"? A. Yes.

Q. Is this a picture of Mrs. Rhodes (indicating)?

A. It is.

Q. Now, have you had occasion to examine that exhibit in the last few days? A. Yes.

Q. Will you state to the Jury what you found, if anything, that was irregular in the spinal column there of Mrs. Rhodes?

A. Well, this particular plate shows nothing particularly significant except haziness in this region,

(Testimony of Doctor N. K. Thomas.)

which the Jury can see. The main findings are on a lateral plate, one of the other exhibits.

Q. Would you prefer looking at one of those first? [123]

A. Well, this particular plate does not show much of interest.

Q. Which one shall we take next?

A. Number 7.

Mr. Hall: I offer in evidence exhibits 7 and 8 for identification.

Mr. Baker: Were these pictures taken at the same time as Plaintiffs' Exhibits 5 or 6?

The Witness: All three pictures were taken at the same time.

Mr. Baker: We make the same objection as we did to the previous offering, Your Honor please.

The Court: The same ruling.

Q. Will you explain that x-ray picture to the Jury, Doctor Thomas?

A. As the Court will view this picture, the vertebral column is relatively in line. The normal curve is all right until it gets to this level (indicating). It will be seen that this particular vertebra has slipped one-half inch on the vertebra immediately below. That is the striking thing, the diagnostic feature of this picture.

Q. Dr. Thomas, what could have caused this slipping of the vertebra?

Mr. Baker: Well, we object to that as calling for a conclusion of the witness. [124]

Mr. Hall: Yes, it is.

(Testimony of Doctor N. K. Thomas.)

Mr. Baker: The question should not be what caused it.

Q. You may base that, Dr. Thomas—I might add this—on her general condition and the x-ray pictures you took of her and the examination you made in June of 1947.

Mr. Baker: I think we will object to it on the ground he hasn't been properly qualified to testify as to an opinion in this particular case from the evidence adduced up to this date.

The Court: You admitted his qualifications generally, did you not?

Mr. Baker: Oh, yes.

The Court: To testify as an expert.

Mr. Baker: Even an expert can go to guessing.

The Court: I think he is in the realm of an expert's experience. I think he may answer.

A. This injury was probably caused, this particular condition was probably caused by some traumatic injury.

Q. Can you tell by looking at the injury or have any general idea as to about when the injury could have been caused?

A. The only thing I can say is that the injury—

The Court: A little louder, please. [125]

A. The only thing I can say is that the injury occurred some time prior to the time this picture was taken.

Q. What is the technical name for this condition? A. Spondylolisthesis.

Q. I wonder, Doctor Thomas, if that means the

(Testimony of Doctor N. K. Thomas.)

slipping of the vertebra from its regular position in the spinal column, that we generally know as the spinal column.

A. That is correct.

Q. Did you examine Mrs. Rhodes generally at that time? A. I did.

Q. What was her condition?

A. The principal thing that bothers her at the time was the fact that she had pain and tenderness over this area that one sees in the area, namely, the level of the fifth lumbar on the first sacral.

Q. Was she complaining of pains and aches in the back? A. She was.

Q. Does this condition explain to your satisfaction that this could cause the pain and soreness she complained of at that time?

A. This could very well have caused the complaint. [126]

Q. Did you give her a general examination?

A. Only insofar as her back was concerned.

Q. Did you give her a urinal? A. Yes.

Q. Will you refer to your chart, please.

A. She had a urine examination on that same date.

Q. What was your finding on that?

A. There was nothing abnormal about the urine examination.

Q. Did you take a blood count?

A. We took a blood count on that date.

Q. Now, Dr. Thomas, will you refer to the other x-ray pictures and you may select either one you

(Testimony of Doctor N. K. Thomas.)

want to choose and put it on the board for us. Referring now, Dr. Thomas, to Plaintiffs' Exhibit 8 in evidence, I will ask you to state what that picture shows?

A. This picture shows essentially the same thing as shown in the similar picture, I believe Exhibit 6. It shows haziness, increased cloudiness and fuzzy appearance that is not present at the other levels, present at the fifth lumbar and first sacral.

Q. Is that what you call the "small" of the back? A. Yes.

Q. That is just above the hip bone in the back?

A. Yes. [127]

Q. How do you account for the fuzzy condition of the picture; is that what you said?

A. I account for it on the basis of the spondylo-listhesis.

Q. In other words, the slipping of the vertebra.

A. The injury.

Q. What effect does it have on this area that you refer to as the "fuzzy" area?

A. Well, it sets up an arthritic condition which is an over-growth of bone in the region.

The Court: I am sorry, I couldn't hear you.

A. It sets up an arthritic condition with an over-growth of bone in the region.

Q. Dr. Thomas, do you have any information as to the amount of money that Mrs. Rhodes paid your clinic?

Mr. Baker: I think I will object to that; that is

(Testimony of Doctor N. K. Thomas.)

not the criterion. The criterion is the reasonable value of the services.

The Court: You mean the amount of money paid for those services here?

Mr. Hall: Yes.

The Court: He may answer.

A. I have no information at the present time. I can look up the records if the Court requests.

Mr. Hall: Well, you may cross-examine.

Mr. Baker: No questions. [128]

Mr. Hall: I wonder if you would leave those x-ray pictures here. Perhaps we should leave them here with the clerk, if there is no objection.

The Clerk: No objection.

Mr. Hall: Dr. Secrist, you come forward, please.

DELBERT L. SECRIST

called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hall:

Q. Will you state your full name, Dr. Secrist?

A. Delbert L. Secrist.

Q. You live in Tucson? A. Yes, sir.

Q. Are you a licensed physician and surgeon in the State of Arizona? A. Yes, sir.

The Court: How do you spell your last name, please?

The Witness (spelling): S-e-c-r-i-s-t.

(Testimony of Delbert L. Secrist.)

Q. How long have you been practicing your profession?

Mr. Baker: We will admit those qualifications.

A. Since 1930, is the date of my license, sir.

Q. Have you been practicing in Tucson?

A. Yes, sir, with the exception of four years in [129] the army.

Q. Have you had occasion, Dr. Secrist, to treat Mrs. Rhodes, sitting at the end of the table, professionally (indicating)? A. I have.

Q. Can you tell us when it was?

A. I don't have my records with me. In fact, they are not available. At the time I first saw Mrs. Rhodes I was associated with Dr. Victor M. Gore. My records were in with him a year ago, and when I went away, the records were disposed of because he has died. I guess it was in the spring or early summer of April, 1947. I think the nurse can verify that, if it is not correct.

Q. Would you say March, 1947, is close?

A. I wouldn't specify it. My recollection had it a year ago in the spring or early summer.

Q. Did you give her an examination at that time? A. I did.

Q. What did your examination disclose?

Mr. Baker: I object to that as being too remote from the time of the accident and there is no connecting testimony.

The Court: Overruled.

Q. You may answer, Dr. Secrist.

A. She came to me complaining of a backache.

(Testimony of Delbert L. Secrist.)

I [130] did a complete physical examination, finding no other cause to account for the backache, I sent her to Faris, Hayden and Present laboratory for x-rays. The resultant x-rays showed—

Mr. Baker: Now, just a minute; I will object to the resultant x-rays. They are not in evidence.

A. It shows the same things as these (indicating).

Mr. Baker: Just a minute, Doctor.

Q. Dr. Secrist, I will hand you Plaintiffs' Exhibit 7 in evidence, an x-ray picture, and ask you to state if you have seen that x-ray picture before?

A. I can answer that before I start. I haven't seen this one, but I have seen ones like this (indicating).

Q. Will you state to the Jury what you found from your examination of the x-ray picture, which is Plaintiffs' Exhibit 7 in evidence (indicating).

A. This is a typical case of severe spondylolisthesis, the slipping of one vertebra on one below.

Q. Can you tell by looking at that how long that condition might have existed? I will withdraw that. Just have a seat, Doctor. Dr. Secrist, would this condition as you observed it here, be sufficient to explain, and to be the cause of the soreness and pain which she complained of when she visited you?

A. Yes, I think it is entirely so.

Mr. Hall: Take the witness. [131]

Mr. Baker: No questions.

Mr. Hall: That is all. Thank you, Doctor.

MRS. BERTHA LUCILLE RHODES, offered herself as a witness in her own behalf, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Hall:

Q. Will you state your name, please?

A. Bertha Lucille Rhodes.

Q. Now, Mrs. Rhodes—

The Court: Now, can I ask you, Mrs. Rhodes, to please speak louder, slowly, and take it easy so that we can all hear you and know what you say.

Q. Where do you live, Mrs. Rhodes?

A. In Tucson.

Q. How long have you lived in Tucson?

A. The past fifteen years.

Q. Have you lived on a ranch the greater portion of that time? A. Yes, I have.

Q. Where was the ranch?

A. Twenty miles out of Oracle.

Q. North of Oracle? A. Yes. [132]

Q. How long have you actually been living in the City of Tucson? A. Three years.

Q. Mrs. Rhodes, did you ride the Greyhound Bus Lines on the 25th day of March, 1946?

A. Yes.

Q. And where did you board the bus?

A. At Safford, Arizona.

Q. Did you buy a ticket on the Greyhound Lines? A. Yes.

Q. Was there anyone with you?

(Testimony of Mrs. Bertha Lucille Rhodes.)

A. My little boy.

Q. How old was he at that time?

A. He was five.

Q. You and your little boy bought tickets at Safford? A. Just for myself.

Q. You got on the bus at Safford?

A. Yes.

Q. Was Mr. Bach, the young man over here, the driver of that bus, or do you recognize him (indicating)? A. I don't recognize him.

Q. Have you ever seen him—had you ever seen the driver—

Mr. Baker: She was on the bus, I will stipulate to that, and Mr. Bach was driving it. [133]

Q. Had you ever seen the driver of that bus before the day you got on the bus at Safford?

A. No.

Q. Where did that bus go from Safford?

A. You mean the first stop it made?

Q. Yes, where did you go?

A. I went to Melrose, New Mexico.

Q. That is where you were going? A. Yes.

Q. Where did the bus stop after you got on at Safford, do you remember?

A. At Duncan, I believe.

Q. Did you stop at Lordsburg first and then Deming? A. Yes.

Q. Did you know anything about the bus schedule or time it was supposed to arrive at these towns?

A. No.

Q. Do you recall an accident on the highway

(Testimony of Mrs. Bertha Lucille Rhodes.)

west of Las Cruces? A. I beg your pardon?

Q. Do you recall an accident in which the bus you were on was involved in an accident west of Las Cruces on that day? A. Yes.

Q. About where was that accident, as best you know? [134]

A. About fifteen miles east of Las Cruces.

Q. You don't know except what somebody told you? A. Yes, I heard that report.

Q. About what time of day or night was it?

A. As I remember, it was just before the sun went down.

Q. What was the first thing you noticed about it that was unusual as you were riding along on the bus? A. It was unusual?

Q. Yes; what is the first thing you noticed about the accident?

A. Well, I was just getting up. I was awful hurt.

Q. You were just riding there and something happened and you fell in the bus?

A. Well, I didn't realize I fell. The first thing I realized was when I was getting up.

Q. You don't remember when you fell?

A. No.

Q. Do you know what made you fall, or did you at that time know what made you fall?

A. No.

Q. Had you seen any other cars on the highway or any other traffic at all?

A. I must have, but I don't recall any.

Q. You don't remember? A. No. [135]

(Testimony of Mrs. Bertha Lucille Rhodes.)

Q. Do you remember what you were doing when the accident happened?

A. Just sitting there with my little boy.

Q. Where were you seated in the bus, if you recall? A. About middleways in the bus.

Q. Were you on the inside or outside?

A. You mean sitting on my seat?

Q. Yes. A. I was on the outside.

Q. With the little boy on the inside?

A. Next to the window.

Q. You don't remember anything that happened before you fell in the aisle? A. No.

Q. Do you remember anything about the condition of the traffic or the cars or anything after the accident?

A. No, I just remember some of the patrol officers.

Q. Just tell us what you remember took place, if you do remember what took place, after you were lying down in the aisle of the bus; what was the next thing that occurred?

A. Well, I raised up and I wanted to find out where my little boy was. I began to look for him. He was down between the seat with the breath knocked out and I tried to console him, keeping him from [136] crying.

Q. He was crying? A. Yes.

Q. Did you notice other people in the bus?

A. I noticed a smaller baby that was crying.

Q. Was the bus standing upright?

A. Yes, it was leaning a little.

(Testimony of Mrs. Bertha Lucille Rhodes.)

Q. How did you get off the bus?

A. From the rear.

Q. Did you notice that the front end of the bus was torn out?

A. Well, I didn't look too much because I didn't want to see too much, and I was all excited and I was afraid that I would see those people that were killed in the car.

Q. So, you left the bus.

A. I just tried to.

Q. Did you and your little boy get out without help from anyone? A. No, they helped us.

Q. Do you know who helped you?

A. I think the patrol officer and the girl who testified this morning.

Q. Did you see Mrs. Tuck there, the lady who testified this morning? A. Yes. [137]

Q. Was she giving you first aid, do you remember? A. Yes.

Q. Did you see Mr. Bach, the bus driver?

A. I saw the bus driver.

Q. Did he help, or what was his condition?

A. He was hurt badly.

Q. Was he lying down?

A. He was sitting down, looking awful hurt.

Q. What did you do after you got off the bus?

A. I got on another bus.

Q. Where did you go? A. Las Cruces.

Q. Did you go to the hospital?

A. Well, they took us someplace to be examined.

(Testimony of Mrs. Bertha Lucille Rhodes.)

Q. Did you see Mr. Rumeh, the other plaintiff, this gentleman sitting here (indicating)?

A. I don't recall him.

Q. Do you remember seeing any people or bodies of people out in front of the bus lying prone?

A. Yes, some people groaning and complaining.

Q. Now, Mrs. Rhodes, what happened to you physically as a result of that accident there?

A. Well, I didn't realize that I was hurt so badly until about a couple of hours later, I began to get stiff.

Q. What happened to your teeth? [138]

A. That is the first thing I realized: my mouth was all swollen and bleeding.

Q. Did you lose any teeth? A. Yes, two.

Q. Two? Were any other teeth broken?

A. Yes.

Q. Or injured?

A. Yes, broken to where I couldn't use it. It was broken off sharp.

Q. Was your mouth sore? A. Yes.

Q. To what extent?

A. That I could not eat for several days.

Q. What other injuries did you receive from the accident?

A. Well, my both legs turned black and blue from the knees down.

Q. How long did they bother you?

A. It was two months before I could get around, but my back, too, was very painful.

Q. What part of your back was painful?

(Testimony of Mrs. Bertha Lucille Rhodes.)

A. Well, the small of my back. My back was the worst pain that I had.

Q. How did your back feel, Mrs. Rhodes?

A. Just stiff. And when I would get up on my feet I would have to sit down or lay down. [139]

Q. How old are you now? A. Forty-five.

Q. Did your back improve as time went on?

A. Well, I thought it would improve, but it did not. It got worse and worse and worse.

Q. What finally happened?

A. I had to go to a doctor.

Q. Whom did you go to? A. Dr. Secrist.

Q. And did you go to some other doctors? Strike that out. Did you go to Dr. Thomas?

A. Later.

Q. But you went to Dr. Secrist first?

A. Yes.

Q. Those are the two gentlemen who testified here? A. Yes.

Q. Did you explain to both those gentlemen how you felt? A. Yes.

Q. The soreness and pains in your back continued from the time of the accident until you went to Dr. Secrist? A. Yes.

Q. Had they gotten worse or better would you say? A. Worse.

Q. Did they continue, the same pains, until you went to Dr. Thomas? [140] A. Yes.

Q. And what has been your condition since then?

A. Well, the pain when I get up in the morning, it is so severe I can't go—I can't get going for

(Testimony of Mrs. Bertha Lucille Rhodes.)
about two hours. I have to sit around here and there.

Q. Are you able to do your work? A. No.

Q. Prior to the accident, were you able to do your work? A. I tried to do it.

Q. Did you do it?

A. Well, I would have to call in help.

Q. Once in a while? A. Yes.

Q. Were you living on a ranch? A. No.

Q. Prior, did you—I don't think you understood. Before your accident, did you do your work?

A. Yes.

Q. Were you getting along all right?

A. Yes.

Q. Were you in good health? A. Yes.

Q. Following your accident, you had to have help, did you? [141] A. Yes.

Q. Do you still have to have help to take care of part of your work, of you and your little boy?

A. More than ever, yes.

Q. Your condition today, so far as your back is concerned, is as bad, in the same vein, or better than it was when you went to Dr. Thomas in 1947?

A. It is worse.

Q. Does it pain you today? A. Yes.

Q. Now, just explain to the Court and Jury, Mrs. Rhodes, how it pains you, how it affects you and how it interferes with your work, in your own words.

A. Well, just say, like this morning, I wanted to get up early so that I could be down here in the morning. Mother Rhodes—I would start the break-

(Testimony of Mrs. Bertha Lucille Rhodes.)
fast, and I started the breakfast but that is about all.

Q. Why couldn't you?

A. I can't stay on my feet.

Q. You get tired?

A. Oh, it is the pain; it is a severe pain across the back.

Q. In the small of your back?

A. Yes. [142]

Q. Have you considered an operation?

A. Went as far as to make appointments with the hospital, reservations.

Q. You planned on having an operation?

Mr. Baker: Well, that was a question to ask the physician. I don't think the witness is qualified to determine whether she needs an operation or not.

Mr. Hall: I am asking whether she planned to. She would have to decide it.

A. The doctors told me—

Mr. Baker: Just a minute; that is a question that should have been asked of the physicians, if the Court please.

Mr. Hall: I think it is proper as to what her plans are.

Mr. Baker: That wouldn't make any difference, what she planned, unless it was necessary.

The Court: I think that is true; that might have been asked of the physicians, but I believe she may testify if she expects to be operated on.

Q. You may answer the question, Mrs. Rhodes.

A. The doctors left it up to me.

(Testimony of Mrs. Bertha Lucille Rhodes.)

Mr. Baker: Just a minute; I object to what the doctors said; that is hearsay.

Q. Do you know now whether you are or are not going to have an operation? [143]

A. I will have to have an operation.

The Court: I didn't hear that.

The Witness: I will have to have an operation.

Mr. Baker: I move to strike that, that is improper. That is purely within the province of the physician.

The Court: The answer may stand.

Q. How much money have you spent for your care in connection with this back injury, back condition, since the time of this accident?

Mr. Baker: Well, I believe I am inclined to object to that. I don't think that is the proper way to prove it. She can't make a general statement. If she has bills or amounts—

The Court: That is correct; she ought to have the amount of money that she has expended.

Mr. Hall: We have all these bills. I might get that information. I had some difficulty.

Mr. Baker: That is essential.

Q. Do you have any of the received bills with you?

A. I have down what I have been out; no received bills.

Q. No received bills?

A. No, but I do have down what I have been out.

Q. Now, Mrs. Rhodes—

(Testimony of Mrs. Bertha Lucille Rhodes.)

Mr. Hall: I think she should be able to answer [144] the question.

The Court: If she has them.

Mr. Baker: If she has the items, yes.

Q. Do you have your items? A. Yes.

Q. How much have you spent as the result of—

A. I have spent \$690.

Q. Now, Mrs. Rhodes, have you had your teeth put back? A. No.

Q. Are they still out? A. Yes.

Q. Are they the upper teeth? A. Yes.

Q. Do you plan on having those put in?

A. Yes, it is bridgework.

Q. Bridgework. Have you had an estimate of what that would cost you?

Mr. Baker: We will object to that, if the Court please.

Mr. Hall: That is the only way she can tell; what they told her.

A. I know what it costs to put it in.

The Court: Just refrain from answering the questions until the disposition of these objections.

Mr. Hall: I have asked, the Court please, if she had an estimate of what it would cost her.

The Court: Well, you might—if she has had an estimate, it isn't exactly the way to prove it, but—

Mr. Hall: No, it is not. If the Court please, I can go see the dentist. We can pay the dentist for what is owing them or have them come down and testify. In other words, I would have to send her down. I wanted to save her that expense. That is the only reason why I am doing it this way.

(Testimony of Mrs. Bertha Lucille Rhodes.)

The Court: I suggest that you gather together all these documents and give them to counsel. He might be willing to discuss the matter with you. I think you should lay a better foundation for those expenditures.

Mr. Hall: You may cross-examine.

Cross-Examination

By Mr. Baker.

Q. Mrs. Rhodes, all you know about this accident is that you and your boy were riding along on the bus and suddenly you found yourself in the aisle; that is about all you know?

A. That is what I know after the accident, that I was hurt in getting up out of the aisle.

Q. You didn't see the collision or anything of that kind? [146] A. No.

Q. If there was one? A. No.

Q. But, I say, all you know is that you were riding the bus and you were on the floor? A. Yes.

Q. And after the accident you saw the driver of the bus and he was badly hurt? A. Yes.

Mr. Baker: That is all.

Mr. Hall: That is all, Mrs. Rhodes.

Mr. Fowler: That is all the examination we have until we frame the hypothetical question to Mr. Baker.

Mr. Baker: You are going to frame it, not me; it isn't my question.

Mr. Fowler: I thought Mr. Baker said that he would be very glad to assist us in framing it.

Mr. Baker: I did not. I said, all you better do is set it down in writing to save time.

The Court: We will give you time to write out the question.

Mr. Baker: I will be glad to read it.

The Court: You are holding this one witness here, are you? [147]

Mr. Baker: Yes.

Mr. Fowler: For possible rebuttal tomorrow too, Mr. Jones.

Mr. Baker: If you are holding him, you might take a recess now.

Mr. Fowler: And argue about the questions and instructions. We have one juror to go to Tombstone yet.

The Court: What was that?

Mr. Fowler: We have one juror to go to Tombstone yet to vote.

The Court: So, you can't progress any further this afternoon between now and 3:30.

Mr. Fowler: I think we could all right, without this hypothetical question, unless your Honor wants to rule.

The Court: Can you put on some other witness?

Mr. Fowler: Mr. Rumeh.

Mr. Baker: Do you mind? We have an understanding with Mrs. Rhodes to take the stand a few minutes.

BERTHA LUCILLE RHODES,

having previously offered herself as a witness in her own behalf and having previously been sworn, testified further as follows:

Redirect Examination

By Mr. Hall:

Q. Mrs. Rhodes, what is the estimated cost of the [148] dental work necessary to put your teeth back

(Testimony of Mrs. Bertha Lucille Rhodes.)

by bridgework? A. \$125.

Mr. Hall: Any questions?

Mr. Baker: No.

Mr. Hall: That is all; come down.

GEORGE RUMEH,

plaintiff herein, called as a witness in his own behalf, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Fowler:

- Q. What is your name, please?
A. George Rumeh.
Q. Where do you reside?
A. Claypool, Arizona.
Q. How old are you now? A. Forty-two.
Q. How old were you in March, 1946?
A. Thirty-nine.
Q. Are you married? A. Yes, sir.
Q. Is your wife living? A. Yes, sir.
Q. In Claypool, Arizona? A. Yes. [149]
Q. Do you have a child? A. Yes, sir.
Q. How old is the child?
A. She will be eight this month.
Q. Where is Claypool?
A. Claypool is—well, the easier way to describe it, it is right in between Globe and Miami.
Q. That is a distance of seven miles?
A. It is seven miles between Globe and Miami, and we are in between.
Q. That is where the ball club plays?
A. That is right.

(Testimony of George Rumeh.)

Q. What were you doing in March, 1946; what were you doing then?

A. I had a grocery store.

Q. Have you got the grocery store now?

A. No.

Q. How long since you had it?

A. A little over two years.

Q. Were you supporting your wife and child?

A. Yes, sir.

Q. How long have you lived in Claypool?

A. Well, I lived in the district there since 1911; that is 37 years.

Q. Thirty-seven years. You were almost born there? A. Almost. [150]

Q. Did you board the Greyhound bus near that point? A. Yes, sir.

Q. Where? A. I boarded the bus in Globe.

Mr. Fowler: I imagine you will stipulate that he was a paid passenger?

Mr. Baker: Yes, sir.

Q. By yourself? A. Yes, sir.

Q. Where were you going?

A. To a funeral of one of my uncles.

Q. Where? A. Fort Smith, Arkansas.

Q. Were you going to Las Cruces?

A. I was going through Las Cruces.

Q. El Paso? A. Yes.

Q. Were you on the same bus all the time?

A. Yes.

Q. You got on at Globe, I think? A. Yes.

Q. Where was your first stop?

A. Safford.

(Testimony of George Rumeh.)

Q. It didn't stop at Duncan?

A. Duncan is the other side.

Q. Do you remember Mrs. Rhodes getting on?

A. No, I do not, but we stopped in Safford for lunch; somebody got on, somebody got off.

Q. Where was your next stop?

A. I think it was about seven miles out of Safford.

Q. A regular station?

A. No, there is an inspection station there and they stopped there.

Q. Was it one of these Arizona inspection stations?

A. Yes, somebody had missed getting on to the bus, and they held us up.

Mr. Baker: I object to that as—

The Court: Not very material.

Q. Then where next did you stop?

A. Duncan.

Q. Then where did you stop?

A. Las Cruces.

Q. Hadn't you missed— A. Deming.

Mr. Baker: You stopped at Lordsburg.

A. Lordsburg, and then Deming.

Q. Did you see Mrs. Tuck get on the bus?

A. Well, I didn't know her. Maybe I saw her, but I didn't pay attention to her.

Q. Did you stop at Deming?

A. Yes, we stopped at Deming.

Q. Then what happened as you approached Las Cruces? [152]

A. I really don't know. I was lying down in the bus.

(Testimony of George Rumeh.)

- Q. Where were you? A. On the front seat.
- Q. On the driver's side?
- A. On the other side of the driver.
- Q. He was on the left-hand side and you were lying down on the right side? A. Yes.
- Q. Was there anything in front of you?
- A. No. I was in the first seat in the aisle.
- Q. Nothing in front of you but the windshield?
- A. I guess so.
- Q. And a little rail?
- A. I guess that is what it was.
- Q. Do you know how fast he was going?
- A. No, I don't. I was lying down. I was going to be on that bus for two days and two nights, and I was trying to rest.
- Q. What awakened you?
- A. He slammed on his brakes. He held them down for a little while, and I sat up.
- Q. What did you see?
- A. I saw this car almost right at us.
- Q. Then what happened to you? [153]
- A. I don't know. I found myself trying to get up in front. I couldn't get up.
- Q. Anybody there with you?
- A. Not very close to me. I saw the driver there. He was farther back.
- Q. What was your condition, physical condition?
- A. Well, there must have been something wrong with my back because I tried to get up but I couldn't.
- Q. Nobody helped you get up?
- A. They brought some topcoat, putting it on me.
- Q. Were you out of your head?

(Testimony of George Rumeh.)

A. Well, I must have been.

Mr. Baker: If he was out of his head, he wouldn't know.

Q. Were you suffering from any concussion?

A. I was paining all over.

Q. Were you taken into Las Cruces?

A. Yes, sir.

Q. By whom? A. Some ambulance.

Q. How long did you stay there?

A. I was there two weeks.

Q. Were you taken to the hospital there?

A. Yes.

Q. How much did you pay the hospital?

A. And the hospital and the doctors, we got at \$300 [154] for the two weeks.

Q. Dr. who?

A. Dr. C.—Dr. Evans, anyway.

Q. Dr. Evans in Las Cruces? A. Yes.

Q. And the hospital in Las Cruces?

A. Yes.

Q. What was the name of the hospital?

A. McBride.

Q. McBride Hospital? A. Yes.

Q. Where did you go from Las Cruces?

A. The first day I got up I came home.

Q. To Claypool, Arizona? A. Yes, sir.

Q. Did you miss your uncle's funeral?

A. Yes.

Q. He was buried in the meantime?

A. Yes.

Q. What did you do when you got back to Globe?

Mr. Baker: Well—

(Testimony of George Rumeh.)

Mr. Fowler: I am asking about medical expenses.

Mr. Baker: You better ask him about—we are not interested in his life from now on.

The Court: Proceed. It is a proper question.

Q. What did you do when you got back to Globe?

A. I went to bed.

Q. Did you hire a doctor? A. Yes.

Q. Who? A. Brayton.

Q. How long did he treat you?

A. He treated me for about three or four months.

Q. What did he treat you for?

A. Well, I had something wrong with my back. I couldn't straighten it out, so, he kept watching my head. I had a cut on top of my head that I had sewed up in the hospital at Las Cruces, and my nose had been broken and had to be broken over to be reset in Las Cruces, so my chest had been caved in. He kept watching my chest more than anything.

Q. He knew you had tuberculosis? A. Yes.

Q. Had you told him?

A. He knew it before.

Q. Had you been treated by him before the accident? A. Yes.

Q. How much did you pay him, or how much do you owe him?

A. I haven't paid him; I don't know.

Q. How much have you paid him so far?

A. I think it is \$425. [156]

Q. Were you hospitalized at Claypool?

A. No, I stayed home. My wife is a nurse.

Q. When did you next see a doctor?

(Testimony of George Rumeh.)

A. I went to El Paso to see Dr. Long; he is a chest specialist.

Q. And you hired him? A. Yes.

Q. How long has he treated you?

A. He has treated me for a little over two years.

Q. He is the doctor that was on the stand here yesterday? A. Yes, sir.

Q. And made the x-rays of you? A. Yes.

Q. How much do you owe him?

A. Well, I don't know.

Mr. Baker: I object to how much he owes him.

A. I don't know anyways.

Mr. Baker: He doesn't know anyway; that's okay.

Q. You don't know how much?

A. He isn't paid, but I don't know how much.

Q. Can you find out tonight and testify in the morning, as Mrs. Rhodes did, how much you owe Dr. Brayton? A. I can call him, Dr. Long.

Mr. Baker: Dr. Long was here on the stand. I don't think that is proper.

Mr. Fowler: I think——

Mr. Baker: He never testified about medical expenses.

The Court: I think this witness can testify how much indebtedness he owes.

Mr. Baker: He said he doesn't know.

Mr. Fowler: We can find it out in the morning.

The Court: You might ask him the question. He said he didn't know?

Mr. Baker: Yes, he did.

Q. Do you know how much you owe Dr. Long?

A. No, I do not. I didn't think I was through

(Testimony of George Rumeh.)

with him yet. I went to him just two or three days ago, and I am not through with him yet.

Q. Can you tell the Court and jury in the morning how much you owe him?

A. If I can make connections with him on the phone, I can.

Q. How much hospital bills have you incurred?

A. There hasn't been any other hospital bills but some other doctor bills.

Q. What are the other doctors?

A. Dr. Pauley from Phoenix. He is a chiropractor.

Q. That is—(spelling) P-a-u-l— [157-A]

A. Yes, (spelling) P-a-u-l-e-y, from Phoenix, a chiropractor.

Q. How much do you owe him or how much have you paid him?

A. I paid him \$54 for a few treatments and x-rays.

Q. Of what part of your anatomy?

A. Upon my back and upon my neck.

Q. Who else have you seen?

A. That is all; Dr. Brayton, Dr. Pauley and Dr. Long.

Q. And then this doctor in Las Cruces?

A. Well, that was the first two weeks I paid him.

Q. No other doctors, no other hospitals now?

A. No, that is all.

Q. Are you going to have to see other doctors in the future?

A. I think so. From the reports Dr. Long has given me, I will have to continue going to him.

Q. Are you getting pneumothorax?

(Testimony of George Rumeh.)

A. No, I was getting pneumothorax, but I can't—

Q. Since the accident?

A. No, I had the pneumothorax about fifteen years before the accident. Now, that is all collapsed so that there is nothing in there.

Q. How about your right shoulder and arm?

A. It is still in bad shape. I can lift this about [158] like that, and that is all. (Indicating.)

Q. Are you getting any treatments for that?

A. I don't think I can do anything for it as the doctors told me.

Q. And you are permanently disabled in the right arm? A. Yes.

Q. And you will not breathe again in the right lung?

Mr. Baker: I object to that; that is calling for a conclusion of the witness.

The Court: Objection is sustained.

Q. Now, your grocery store in Claypool, when did you give that up?

A. I gave that up just a few months after I was in the wreck.

Q. Who had been running it in the meantime while you were recuperating? A. My wife.

Q. Why didn't she continue?

A. Well, she had to start taking care of me.

Q. What happened to the grocery store?

A. I had to sell it or give it away.

Q. How much had you been making up to March 25, 1946?

Mr. Baker: Do you mean off his grocery store?

Mr. Fowler: Off his grocery store.

(Testimony of George Rumeh.)

Mr. Baker: We object to that. He sold it; no evidence as to the profit. No matter what he sold—

The Court: Your question is what were his earnings prior to the time of the accident?

Mr. Fowler: Yes.

Mr. Baker: From the grocery store.

The Court: From the grocery store?

Mr. Fowler: I will withdraw the question.

Q. What was your earning capacity from the grocery store?

Mr. Baker: I am going to object to it. It is immaterial, because the evidence is that he sold the grocery store after the accident. The evidence would have no bearing except to show loss of earnings and he has a situation, he can't connect it up unless he shows first the profit he made off the sale.

Mr. Fowler: I will withdraw the question. Just a minute, if the Court please.

Q. Mr. Rumeh, could you operate a grocery store at the present time? A. No.

Q. How old are you? A. I am forty-two.

Q. At the present time? [160]

A. Forty-two.

Q. How old were you at the time of the accident, March, 1946? A. Thirty-nine.

Mr. Fowler: You may cross-examine the witness.

Cross-Examination

By Mr. Baker:

Q. Mr. Rumeh, you say immediately before the time of this accident, which was near Las Cruces, you were lying down in the seat, is that right?

A. Yes, sir.

(Testimony of George Rumeh.)

Q. Didn't you have a seat mate?

A. Yes, I did.

Q. A sergeant in the army, wasn't he?

A. He was from—an army man, I don't remember what he was, sergeant or—

Q. Weren't you talking to him at the time of the accident?

A. No, I was not. We got off. I had been talking to him all along. We got seats together at Safford. I hadn't been seated near him and the last time I remember we got off at Deming together, and when I got a drink, and we talked for a little while, and I laid down.

Q. You were lying down at the time of the impact, is that right?

A. Well, as I say, I just sat up just before it [161] happened.

Q. The instant before it happened?

A. Yes.

Q. When the brakes were applied?

A. No, he put the brakes on and kept them on. And after he kept them on, I looked up to see what was—

Q. What did you see?

A. This other car, it looked like it was right at us.

Q. When you looked up, the car was right at you?

A. Yes.

Q. And then this collision occurred?

A. I suppose; I don't remember going out of the window, but I must have gone out of the window because I was outside.

(Testimony of George Rumeh.)

Q. You felt the application of the brakes and then looked up?

A. Not as soon as—I felt them; after I saw he wasn't letting them up, I looked up.

Q. This Ford car was right on top of—

A. I don't know if it was a Ford.

Q. It was right on him? A. That's right.

Q. Well, you were thrown; you don't know what happened? A. I don't know. [162]

Q. How long after that before you remember anything?

A. When I came to, I was out on the ground.

Q. You were out on the ground when you came to?

A. Yes.

Mr. Baker: That is all.

Mr. Fowler: That is all. I will recall him after he finds out what he owes to the doctor in El Paso.

Mr. Baker: I have no object to having him call him.

Mr. Hall: I have one question to ask Mrs. Rhodes.

The Court: Ask her right there.

MRS. BERTHA LUCILLE RHODES,

having been previously sworn, was recalled as witness in her own behalf and testified further as follows:

Further Redirect Examination

By Mr. Hall:

Q. Mrs. Rhodes, did you lose any baggage or personal belongings as a result of the accident?

A. Yes, I did.

Q. What was the value of it?

A. Fifty dollars.

(Testimony of Mrs. B. L. Rhodes.)

Mr. Hall: That is all.

Recross-Examination

By Mr. Baker: [163]

Q. Did you declare—now, I will have to go into it—did you ever declare \$50 valuation on that at the time you checked it? A. (No answer.)

Q. I didn't ask you, but did you ever make a written valuation at the time you checked that baggage, that it was valued at \$50? A. No.

Q. You paid no extra compensation or money?

A. I had just bought the coat.

Q. No, I am talking about checking, Mrs. Rhodes. You never made any written declaration to the agent of the Pacific Greyhound Lines at the time you checked this baggage, showing that it was valued at \$50? A. I know what I paid for the article.

Mr. Baker: Read the question.

Q. It isn't what you paid for the clothes. It is what you—

Mr. Baker: Read the question, please.

(Last question read by the reporter.)

A. No.

Q. And didn't pay any extra money for having it checked and transported, did you? A. No.

Mr. Fowler: Now, if the Court please, that brings up another question for Mr. Rumeh.

Mr. Baker: Do you know the law?

Mr. Fowler: I am terribly sorry.

The Court: I can see you gentlemen are discussing this question of the value of the baggage. This is not an action based on the loss of the baggage in the

usual sense. The witness testified, I believe, as to the value of the baggage at the time; is that correct?

Mr. Hall: If the Court please, we sued for \$50 for the loss of baggage.

Mr. Baker: Well, that is well established under the tariff. Unless you declare extra value and unless you pay for it, you can't recover more than \$25. That is the law. That is why I said—

The Court: Suppose the baggage had been in her possession, would that have made any difference?

Mr. Baker: Would that have made any difference? It would be the same thing. The tariff declares the maximum.

Mr. Hall: That should be handled by the Court's instructions.

The Court: Proceed. [165]

GEORGE RUMEH,

having been previously sworn, was recalled as a witness on his own behalf and testified further as follows:

Redirect Examination

By Mr. Fowler:

Q. Mr. Rumeh, you were sworn before?

A. Yes.

Q. Did you lose anything in the accident?

A. Yes.

Q. What? A. A topcoat.

Q. What kind of topcoat?

A. It was given to me as a gift.

Q. What was the value?

A. It was, oh, around \$75.

Q. Did you make an application with the Pacific

(Testimony of George Rumeh.)

Greyhound Lines? A. Three times.

Q. Did you get your money?

A. No, the last time I went to the Greyhound, they sent me to the adjuster, and the adjuster said, "You have a case against the Court, get it there;" that is the exact words.

Q. You didn't have a hat.

A. I don't wear a hat. [166]

Q. You didn't lose anything else?

A. I had a grip, but they returned the grip.

Mr. Fowler: That is all.

The Court: No further questions of these witnesses?

Mr. Baker: No.

The Court: I think this will be a good time to adjourn so that the juror can get to his voting place. Any objection to recessing at this time?

Mr. Hall: No, your Honor. The plaintiffs are agreeable.

The Court: I want to admonish you again, gentlemen, not to discuss this case amongst yourselves or allow anybody to discuss it with you, or within your presence. Furthermore, you are not to express any opinion as to the merits of the case until the case has been finally submitted for your decision.

Can I see counsel in chambers after ten minutes, after you have had your smokes?

Mr. Baker: Would you mind instructing the witnesses to be here at ten o'clock in the morning?

The Court: All witnesses are to be here at ten o'clock tomorrow morning. You are now at recess.

Mr. Hall: Can Mrs. Rhodes be excused? She made that request. [167]

The Court: Yes.

Mr. Baker: She may be excused.

(Thereupon Court adjourned at 3:30 o'clock, p.m., on Tuesday, November 2, 1948, and reconvened on Wednesday, November 3, 1948, at 10 o'clock, a.m.)

Wednesday, November 3, 1948, Ten o'clock a.m.

The Court: Will you gentlemen stipulate that all the jurors are present?

Mr. Baker: Yes, they are present.

Mr. Carlton: Yes.

The Court: You may proceed.

Mr. Fowler: Mr. Rumeh, will you take the stand, please.

GEORGE RUMEH,

having been previously sworn, was recalled as a witness in his own behalf and testified further as follows:

Further Redirect Examination

By Mr. Fowler:

Q. Your name is George Rumeh?

A. Yes, sir.

Q. You are the same witness who testified at the close of the session yesterday, is that right?

A. Yes.

Q. You have been sworn? A. Yes. [168]

Q. Now, did you ascertain what you owed Dr. Long in El Paso? A. I did.

(Testimony of George Rumeh.)

Q. Did you discover that last night?

Q. How much do you owe him? A. \$350.

Q. Including his appearance on the stand?

A. He said \$350 is in full for what he has coming.

Mr. Baker: I object to his witness fees on the stand, if the Court please. It includes his expert testimony, he is testifying about. I certainly object to that part of it.

The Court: That is no part of the expenses.

Mr. Baker: Therefore I move that the answer be stricken.

Q. How much did he—

Mr. Baker: Just a minute.

The Court: The answer may be stricken, and you may reframe your question.

Q. How much did you owe him prior to his appearance on the stand here the day before yesterday?

A. I just asked him what I owed, sir.

Q. For everything? A. Yes.

Q. And what was his reply? [169]

Mr. Baker: What is that?

Q. And what was his reply?

Mr. Baker: I object to it, if the Court please, that includes his services as an expert witness.

The Court: Does that include his services as an expert witness?

Mr. Fowler: I don't know; I am trying to find out what—

Mr. Baker: The doctor said that he owed him for everything up to last night.

A. I was down there last week. He just got in.

(Testimony of George Rumeh.)

I asked him what I owed him up to date. He said—

Mr. Baker: That was last night?

The Witness: Last night. I asked him what I owed him for everything.

Mr. Baker: Everything; we object to that.

Mr. Fowler: If the Court please, it can be very easily settled. He certainly owes the doctor something, I don't know what Your Honor allows the witnesses; \$50, \$75?

Mr. Baker: I don't know what the doctor charges for expert testimony.

The Court: That is a matter for a private arrangement between the parties.

The Witness: Your Honor, may I say a word?

The Court: You can. [170]

The Witness: It won't be anything. I'm not supposed to even pay him. That is supposed to be taken care of between him and the lawyer; not for me, for me, that is—I didn't make the arrangement for him to come here. I just made arrangements for him to look—

Mr. Baker: He appeared here then on a contingent fee basis, is that right?

The Witness: I don't know.

Mr. Baker: If I understand you right, that is what you are saying.

The Witness: I owe him this money. What he gets for coming here is another thing.

Mr. Baker: That certainly is an uncertain situation.

(Testimony of George Rumeh.)

The Court: What is that?

Mr. Baker: That certainly is an uncertain situation.

The Witness: I am going to have to pay him.

Mr. Baker: I presume you are going to have to pay him here for being a witness here.

The Court: I think we are getting off the course of our stipulation concerning which amount was to be ascertained. I think this was covered by agreement of counsel yesterday, that he was to find out over the phone what was owing for the doctor, [171] medical services. Now then, if there is any question about it, is it satisfactory for counsel that either or both counsel communicate with the doctor and find out so that you may have the record clear on that?

Mr. Fowler: That's all right.

Mr. Baker: That's all right.

The Court: Where is this doctor now?

The Witness: El Paso.

The Court: El Paso?

The Witness: Yes, sir.

The Court: There seems to be some question as to what is included in the amount.

Mr. Fowler: Yes.

The Court: Is it satisfactory that this witness ascertain from the doctor the amount owing to the doctor for medical services only? Is that correct?

Mr. Fowler: We so stipulate.

Mr. Baker: That's all right. I am not being factitious in my objections. I just want it proper

(Testimony of George Rumeh.)

in order to get the proper answer in a proper manner.

Q. Mr. Rumeh, how much did you sell your grocery store for in Claypool?

A. \$6000.

Mr. Baker: What was the answer? [172]

(Last answer read by the Reporter.)

Mr. Fowler: His answer was \$6000.

Q. When did you sell it?

A. A little over two years ago.

Q. After the accident? A. Yes, sir.

Q. What did you have in it?

Mr. Baker: What is that?

Q. What did you have in it?

Mr. Baker: Well, I think we will object to it.

Mr. Fowler: You wanted the profit.

Mr. Baker: I think we will object to it, if the Court please. That is irrelevant and immaterial. The question he got \$6000 for the property is pertinent.

Mr. Fowler: I will withdraw the question.

Q. You have a stock of merchandise in the store?

A. Yes, sir.

Q. How much was the stock?

Mr. Baker: I object to it; it is wholly immaterial and irrelevant. He sold it for \$6000.

The Court: What are you trying to arrive at?

Mr. Fowler: The profit that Mr. Baker yesterday wanted.

Mr. Baker: I didn't mean the profit in that

(Testimony of George Rumeh.)

sense. What I wanted was you first had to establish [173] what he got for that store. That is what I meant to say.

The Court: He has already answered that.

Mr. Fowler: \$6000.

The Court: What is the next question?

Mr. Fowler: My next question is: did he have a stock of merchandise in the store?

The Court: You may answer that.

A. Yes, sir, I had a stock of merchandise in the store.

Q. How much was it?

Mr. Baker: I object to that; wholly immaterial, irrelevant, how much merchandise he had in the store.

The Court: Overruled.

Q. You may answer.

A. Between \$4500 and \$5000.

Q. Did you own the store alone?

A. No, my mother and I were in partners; Dad and I had been until he passed on and then she took Dad's part.

The Court: I can't hear you when you drop your voice.

The Witness: My mother and I were in partners. Dad and I had been until he passed on and then she took his half.

Q. So, the \$6000, you received one-half and one-half went to your mother? [174]

A. One-half went to my mother.

(Testimony of George Rumeh.)

Q. Have you been able to work or be employed since the accident? A. Not a day.

Q. On anybody's orders?

A. On three different doctors' orders.

Q. Mr. Rumeh, were you and your mother earning any money in the store at the time you sold it?

A. Yes, sir.

Q. How much?

A. Well, that is—I couldn't say exactly how much, because different months it would be a different amount. We were making a very nice living; at least able to buy war bonds, which I can't now.

Q. Can you state how much annually you made?

Mr. Baker: He stated he didn't know, if the Court please?

The Court: He can state it again if he can.

A. We made between \$2500—I mean \$250 and \$300 a month.

Mr. Fowler: You may cross-examine.

Recross-Examination

By Mr. Baker:

Q. That is the two of you together?

A. No. That is what we made. We couldn't live on [175] that much together.

Q. What do you mean "we"?

A. When I said "we" made \$250, my wife and I got that much out of the store.

Mr. Baker: That is all; no more questions.

Mr. Fowler: Step down.

Mr. Carlton: Mr. Jones, please.

LIEUTENANT HOWARD JONES,

having previously been sworn, was recalled as a witness for the plaintiffs and testified further as follows:

Further Direct Examination

By Mr. Carlton:

Q. You are Lieutenant Howard Jones?

A. Yes, sir.

Q. And Mr. Jones, you testified in this matter yesterday? A. Yes, sir.

Q. And you have already been sworn in the case? A. Yes, sir.

Mr. Carlton: If the Court please, we will withdraw the question that we asked the witness yesterday and which question was not answered, the hypothetical question, asked yesterday.

The Court: You withdraw it?

Mr. Carlton: We withdraw it and we framed it again and now ask it.

Mr. Baker: You don't have an extra copy of it?

The Court: You might consult counsel and show it to him. It might save some time later on.

Mr. Baker: That one I have no objection to, but this one I do. I don't object to that one, the one I suggested.

Mr. Hall: Ask the question and then state your objection.

Mr. Carlton: If the Court please, counsel has agreed that this one may be asked and he offers an objection to the second one.

Q. Mr. Jones, you have testified that you are

(Testimony of Lieutenant Howard Jones.)

familiar with Highway 80 at a point about 9 miles west of Las Cruces, New Mexico, where an accident occurred, and you have further testified that you are familiar with the type of pavement and roadway at the point of the accident, and you have further testified that you are familiar with air brakes, such as were used by the Greyhound bus involved in said accident, and that you are familiar with the type of bus that was involved, and the effect of the operation of the brakes in connection with such bus. [177]

Now, Mr. Jones, assuming that that Greyhound bus was traveling at the rate of 45 miles per hour at a point 260 feet from the point of impact, do you have an opinion as to how long it would take that Greyhound bus to stop if the brakes were properly applied at that point and continued to be so applied until the bus would have stopped?

Mr. Baker: You say "how long." That should be "within what distance" and not "how long."

Q. Well, within what distance. Within what distance would it take said Greyhound bus to stop if the brakes were properly applied at that point and continued to be so applied until the bus would have stopped.

A. Well, my calculations show—

Mr. Hall: Just "yes" or "no."

Q. Do you have an opinion? A. Yes.

Q. What is that opinion?

Mr. Baker: Or what is that distance.

Q. Well, what is that distance?

(Testimony of Lieutenant Howard Jones.)

A. I figured that at 101.2 feet. Would you like me to put it on the board?

Q. Yes, will you go down and show on the board.

Mr. Baker: We object to it. He says 101.2 feet. [178] He doesn't have to give a demonstration.

Q. All right. Sit down, Mr. Jones. Now, Mr. Jones, laying the same predicate to you, and assuming that the bus was traveling now at the rate of 50 miles per hour at a point 260 feet from the point of impact, do you have an opinion as to how far it would take that Greyhound bus to stop if the brakes were properly applied at that point and continued to be so applied until the bus would have stopped?

Mr. Baker: What is that question? The same question?

Mr. Carlton: The same question but different speed.

Mr. Baker: Oh, at 50.

A. I have, sir.

Q. What is that distance?

A. May I refer to these notes I worked on, Judge?

The Court: Yes, sir.

A. My calibrations show 50 miles per hour, the bus would have come to a complete stop at 130 feet after the brakes were applied.

Q. Assuming the same question, based on a speed of 60 miles an hour at the point—

(Testimony of Lieutenant Howard Jones.)

Mr. Baker: I object to that; no evidence of [179] traveling at 60 miles per hour.

Mr. Hall: That is what we are trying to show. Introducing it at the speed—that is why we are asking that question. The plaintiff is still producing testimony. We know he has 260 feet to travel by one speed and we want to find out, had he applied his brakes, kept them applied at different speeds, where he could have stopped. I suppose if it got over 260 feet, if the answers were more than 260 feet, it would not be admitted.

The Court: Is there an objection?

Mr. Baker: Yes, I objected to it.

The Court: It seems to me you have a general over-all formula rather than figuring out a specific speed. Instead of 40, 50 miles per hour, wouldn't the matter of calculation based on a sort of table be acceptable?

Mr. Hall: I understand these people, such as Mr. Jones, figure these things from certain formulas and he may be questioned about these formulas. Perhaps he has; I don't know. We are asking him to make a calculation as to what speed a bus would be traveling in order to make so many feet.

The Court: Well, the question is 65, 70 feet, things of that kind. [180]

Mr. Hall: The only thing to show, the total, to show what the general situation is. I think we probably have a question there that would cover 260 feet.

(Testimony of Lieutenant Howard Jones.)

The Court: I mean at 55, 60 miles; you can ask him a question at every mile so far as that is concerned.

Mr. Hall: It won't be more than two or three questions. It is the best illustration——

The Court: There is no evidence here of any particular rate of speed from one witness.

Mr. Baker: In other words, he is taking the province of the Jury. He gave a formula yesterday that in twenty miles he could stop in twenty feet; is that it? The Witness: Yes, sir.

Mr. Baker: And then you gave the formula from which you can carry on.

The Court: Did he? Mr. Baker: Yes, he did.

The Court: That is a matter of calculation.

Mr. Baker: He is doing what the Jury is supposed to do. There is no evidence what speed the bus is traveling.

Mr. Hall: That is exactly what we want to show, 260 feet from one point. How fast was he going if [181] he brought the car to a stop at a point of impact. We know he was going so many miles per hour at the point of impact.

Mr. Baker: That is not our question.

Mr. Hall: If you let us alone we will lead up to it.

Mr. Baker: I am not going to let you alone when you are assuming a lot of things not in evidence. I am not certainly going to let this witness make an argument for the Jury.

The Court: Will you gentlemen come forward? I want to state to the Jury that we have questions to discuss. When the Court calls counsel to come up here for the purpose of discussing these matters in which you are not interested, I don't

(Testimony of Lieutenant Howard Jones.)
want your curiosity aroused, about keeping something away from you, but these are matters that are taken care of between the Court and counsel without the presence of the Jury.

(Thereupon Court and counsel conferred as follows:)

The Court: Why can't you do this: you start with 50, 60 miles an hour; can't you say suppose this speed was beyond 50, 60—

Mr. Baker: He gave that formula. [182]

Mr. Hall: You see, Your Honor, we have one witness who saw the skid marks. This bus went 260 feet. It is only to show he didn't apply his brakes. He didn't do what—he was speeding and didn't apply his brakes.

The Court: This is a crucial point in the case insofar as the law that is applicable to this particular phase.

Mr. Baker: They haven't proven what speed.

Mr. Hall: That is what we are trying to show. We have proof of skid marks and distances.

The Court: One or two witnesses testified—

Mr. Baker: The usual rate.

Mr. Hall: We have skid marks.

Mr. Baker: Nobody testified as to the rate of speed. They all testified as to the usual rate of speed.

Mr. Hall: Will you just let me say this: Mrs. Tuck said she saw the skid marks 260 feet when the brakes were applied. Mr. Salas—Captain Salas

(Testimony of Lieutenant Howard Jones.) said that Mr. Bach told him that he saw this other car 300 feet distant on the wrong side of the road. What we are doing is taking the skid marks or 260 feet away, taking the point of impact. We are trying to show what this bus, going at the usual rate of [183] speed, if he were driving the bus properly, actually that is not what would have happened.

Mr. Baker: I don't believe he can show it that way.

Mr. Hall: But, here is why we are approaching it this way. Instead of fooling around, we have got this question we are going to ask. The bus did not actually stop in 260 feet. We want to approach it this way to show how long it would take to stop the bus at 50, 60, 70, 80.

The Court: It seems to me your proper method would be to have him give the formula, taking this type of bus, and give the formula, that if 50 miles per hour, if the brakes are applied, it would stop within 130 feet and thereafter it would be so much per each additional mile.

Mr. Hall: What we want to do—we wanted to go 50, 60 and possibly 70; that is the formula.

The Court: I am afraid that might leave an impression of some particular speed, that is, in the evidence, but there is no particular speed in the evidence at all.

Mr. Hall: There is, because we have the skid marks showing where the skid marks were shown and then the point of impact.

(Testimony of Lieutenant Howard Jones.)

The Court: You can't generally take those facts and ask a hypothetical question, leaving your facts in there in a little different manner, but by agreeing to use that method——

Mr. Hall: I think it is evidence of speed, the fact that the bus driver applied his brakes as one witness said, and had a collision 260 feet distant. It shows that he was speeding.

The Court: That evidence shows that he kept his brakes on part of the time and released them part of the time.

Mr. Hall: It either shows one of two things, that either he was speeding or he should have applied his brakes, and had he applied his brakes the accident would not have occurred.

The Court: That would be for the Jury to determine.

Mr. Hall: We need this formula.

The Court: If you give the Jury a general formula by an expert, they can make their own computations.

Mr. Hall: I think it is the same thing.

The Court: Well——

Mr. Hall: What do you think, Mr. Carlton?

Mr. Carlton: Ask him to give his formula at least on 50 miles an hour and then have the Jury—if you increase the distance,—in other words, candidly I think—I haven't—I wouldn't know how to work it out myself.

The Court: Then, the formula, if you want to consult with him, you can do that.

(Testimony of Lieutenant Howard Jones.)

Mr. Hall: Let us ask him if he has a formula. I don't believe he did.

Mr. Baker: He did. He gave us the square and he said each time you increase your speed, it is a certain speed.

Mr. Hall: Let us try it.

The Court: Ask him again.

(Thereupon counsel returned to their seats.)

Q. Mr. Jones, do you have a formula for determining the speed of motor vehicles?

A. Yes, sir, I have.

Q. What is the formula?

A. Well, what type of speed, sir, do you want computed?

Q. Well, the speed of a motor vehicle under proper braking conditions.

A. We have quite a few formulas on that. I can, oh, base it entirely on the skid marks where you take the skid marks of the vehicle, measure them, multiply by the shift of the weight of the car. You make the application on the brake and 60 per cent of the job in the front and 40 per cent remains in the rear. [186] The 60 per cent makes it shift. You drag it down to each wheel. You allow 30 per cent for each front wheel and 20 per cent for each rear wheel. You multiply the skid marks times the person, the weight, times the coefficient friction, which is measured in percentage, and then you arrive at your number. Naturally you have to point out four decimal places. After

(Testimony of Lieutenant Howard Jones.)

you arrive at four places, you add those numbers. Count off, point four, extract the square root of that number, and multiply it by 5.47, which is the square root of 30, and one thing, we call it the empirical constant, and this empirical constant, as I have described yesterday, is the application of your car at 30 miles per hour if the energy was directly under it, would raise it 30 feet in the air.

Q. Does the formula determine how far it would take to stop a car that was traveling 20 miles per hour; is that the basis from which you start all your calculations, at 20 miles per hour.

Mr. Baker: Why not get him down to the skid marks formula; that is the one everybody understands. He testified yesterday about the skid mark formula.

Q. What did you testify about where you start your calculation from? [187]

A. We start our desk calculation of 20 from an observation test. We take a vehicle and take it out and make a test with it. As I said, many vehicles will stop within 20 feet, but the braking distance is within 20 feet, one foot more or one foot less; that depends on the amount of efficiency in the brake drum. If it stops short of 20 feet, that vehicle will stop in a smaller distance than at any other given speed. It doesn't make any difference.

Q. At 20 miles, where would it stop.

A. What?

Q. At 20 miles, where would it stop?

A. The braking distance would be about 20 feet.

(Testimony of Lieutenant Howard Jones.)

Q. Now, then, you give the Court and Jury this formula from which you go from 20 to any other figure above 20; give us the formula by which you can go from 20 to any other figure.

The Court: You mean the formula that can be computed—

Mr. Carlton: The formula by which any person can compute the same distance he arrives at by taking another speed.

Q. At 40, what would you have arrived at, a conclusion at 40.

A. As I stated previously, at 20 miles per hour you can stop your vehicle at approximately 20 feet. I am figuring that with 75 per cent efficiency in the brake drums. That is not considered too good. It is considered good brakes, but not exceptionally good. As I stated, the stopping distance or braking distance varies as to the square of the speed. I mean, if you stop at 20 miles an hour in 20 feet, you cannot stop your vehicle at 40 feet at 40 miles an hour, because that amount of time—that amount of speed is twice as great as our basic figure of 20. You have to square that to give us this twice as great. What it would actually be is the square of 2, which is 4, and multiply it 4 times by the 20 feet, you basically started at, at 20 miles per hour, and you have a braking distance of 80 feet.

Q. That is at 40 miles per hour? A. Yes.

Q. Now, how would you arrive at 60 miles per hour?

A. By the same process. Sixty miles per hour

(Testimony of Lieutenant Howard Jones.)
is 3 times as fast as 20 miles per hour and you have to square your 3, which gives you a 9, and multiply 9 by 20 and that gives 180 feet.

Q. So, it is your contention that if it was traveling at 60 miles per hour with the brakes applied, and they [189] are efficient, you would stop within 180 feet? A. Yes.

Q. The fact that there were dual wheels, would that increase or decrease the time of stopping?

A. They should stop in a lesser distance because there is more surface dragging on the pavement, which would create the tendency to stop more easily.

Mr. Carlton: You may have the witness.

Cross-Examination

By Mr. Baker:

Q. Lieutenant Jones, I believe you stated that in—wait a minute—first I will ask you this: I believe you stated yesterday, the cars proceeding at 50 miles per hour, it travels 75 feet per second, is that right?

A. No, sir; I believe my answer was approximately 70 feet per second.

Q. Seventy, all right. And I believe you further stated that you arrived at that by simply multiplying the number of feet in a mile by the number of miles and then diving it by the number of seconds?

A. Yes, you can arrive at that figure, yes.

Q. That is a very simple process to arrive at that? A. Yes.

(Testimony of Lieutenant Howard Jones.)

Q. I believe you further stated that a driver of an [190] automobile or bus or any other vehicle, being met with an emergency or impending danger, it takes him three-quarters of a second for his mind to coordinate to apply that brake?

A. That is right, sir.

Q. If a man was traveling 50 miles per hour and was met by some sort of emergency, that car would travel approximately 51 feet before his mind coordinated a sufficient amount to apply the brakes, is that right, approximately?

A. If the mathematics is correct, that is correct.

Q. I think they are, and then, I believe you further stated, the distances at which a car can stop, have you actually ever seen that demonstration on an 18,000 pound vehicle? A. Yes, sir.

Q. You have?

A. Yes, sir. I say 18,000 pounds. I have seen demonstrations of buses that were comparable to the buses that normally run in and out of El Paso.

Q. But, of course, when you talk about those distances you have to assume that the roads are of a certain character, is that right? A. Yes.

Q. You have to assume that the brakes are in perfect [191] working order? A. No, sir.

Q. Well, in good working order?

A. Yes, sir.

Q. And you have to assume that the weather is dry? A. Yes, sir.

Q. In other words, there are many conditions that enter into it? A. Yes, sir.

(Testimony of Lieutenant Howard Jones.)

Q. In determining that distance?

Mr. Baker: Will you give me those photographs, please? Thank you.

The Court: Are you through with the bulletin board?

Mr. Fowler: Yes, unless the witness wants to make a formula.

Q. I hand you Defendant's Exhibits B, C and D and ask you to examine those (indicating). You say you are familiar with the type of bus as shown in those photographs? A. Comparable.

Q. Comparable. Will you look at the front end of that bus, please. Would you say that after the collision which is apparent from those pictures, that there has been a collision between some kind of bus, is that right? [192] A. Yes.

Q. Look at the front end of that bus. From your knowledge of that bus, were there any brakes left on that bus after that collision?

A. Sir, I don't know.

Q. You wouldn't know, but from the looks of the front end, what would be your opinion?

The Court: What exhibit are you showing him?

A. I presume it is this one (indicating).

Q. This one is Defendant's Exhibit C, but look at those other exhibits which are B, C and D.

A. Well, I still wouldn't know.

The Court: I didn't get the answer.

Mr. Baker: He said he didn't know, he said he wasn't able to say. I think that is all.

Mr. Carlton: Come down, Mr. Jones.

Mr. Baker: I would like to recall Mr. Salas for some other questions on cross-examination. He is anxious to get away and I would like to do it now, if permissible.

The Court: You may.

CAPTAIN C. J. SALAS,

having been previously sworn, was recalled and testified as follows:

Recross-Examination

By Mr. Baker: [193]

Q. Mr. Salas, you are the same gentleman who testified yesterday as a witness?

A. Yes, sir.

Q. For the plaintiff in this case. And you testified you went to the scene of the accident and examined the scene of the accident? A. Yes.

Q. To determine approximately the cause of the accident and the other matters that were involved? A. Yes.

Q. You also identified on Plaintiffs'—no, Defendant's Exhibit A in evidence, identified that as being a picture of the scene of the accident? And you likewise identified the point of collision on that picture with a blue cross, is that right?

A. Yes.

Q. You also identified a certain skid mark that appears just before that blue cross, is that right? A. Yes.

Q. You said you believed that was 5 feet long, that one skid mark? A. Yes.

(Testimony of Captain C. J. Salas.)

Q. Did you examine the road to determine whether there were any other skid marks except that one?

A. I went back up the road a ways and I saw no more skid marks. [194]

Q. You saw no more skid marks except this one?

A. There was quite a bit of traffic at the time I was making my investigation.

Q. And that was the only one you did see?

A. That is the only one I did see, yes, sir.

Mr. Baker: That is all.

Redirect Examination

By Mr. Carlton:

Q. Captain, you testified that you arrived at the point of impact, of this accident about 5:25—

Mr. Baker: No, 6:25.

A. 6:25.

Q. 6:25, and at that time none of the passengers injured or otherwise had been taken in?

A. None of them had been taken in, no, sir.

Mr. Baker: I don't believe this is proper rebuttal or redirect.

The Court: You may proceed.

Q. Were the cars gathered up there?

A. A big number of cars all around, trucks, cars, on both sides of the road.

Q. How many would you say was the most gathered around there at any time?

A. There was times there, there was 30, 40 cars.

Q. Captain, about how many cars were passing there at an hour? [195]

(Testimony of Captain C. J. Salas.)

A. In February they had a road check; 25-hour road check.

Mr. Baker: I object to that as immaterial and not proper redirect.

The Court: Objection sustained, to the question in that form.

Mr. Carlton: He wasn't answering my question. He was explaining—

Q. But during the first hour that you were there, approximately how many cars would you say passed going either east, west or both?

A. There were several. I would say there were over 200 cars that went by there.

Q. I believe you testified yesterday that you supervised the taking of all of these pictures that were introduced in evidence? A. Yes, sir.

Q. I believe you further testified it was about ten o'clock you made those pictures?

A. Yes.

Q. You gave your time in looking after the traffic and the injured and moving the wreckage and then had the pictures taken? A. Yes, sir.

Mr. Baker: I object to that as not being proper redirect. [196]

The Court: You have gone into all these matters.

Mr. Carlton: That is all.

Mr. Baker: That is all. As far as I am concerned, the Captain can be released.

Mr. Hall: If the Court please, I think counsel has agreed to stipulate with us as to what the American table of mortality shows. I will offer to

stipulate, if there is no objection by counsel, that a man forty-two, the life expectancy is 26.72. I might say in that connection, I asked Mr. Rumeh—forty-one—

The Court: Aged what?

Mr. Hall: Forty-two, and that the life expectancy of Mrs. Rhodes—

A Juror: I didn't hear you.

Mr. Hall: —would be 24.54.

The Court: 24.54.

Mr. Baker: What age was she?

Mr. Hall: And she was the age of forty-five years or is now the age of forty-five years.

Mr. Baker: It may be so stipulated, if Your Honor please.

Mr. Fowler: Mr. Carlton is still out. He asked to be excused to talk to Mr. Salas. [197]

Mr. Baker: This would be a good time for a five-minute cigarette.

The Court: If it is a matter of life and death, yes.

Mr. Hall: If the Court please, I think we are through. If I could see Mr. Carlton and find out if he has any other questions to ask—

Mr. Fowler: If the Jury heard the stipulation—one Juror said "Louder."

A Juror: I can't hear you.

Mr. Fowler: Read the stipulation.

The Court: Read those figures.

The Reporter: 26.72.

The Court: Read the whole stipulation.

(The stipulation was read by the Reporter.)

The Court: Those figures are 26.72 years and also 24.54 years.

Mr. Baker: That's right.

The Court: Those figures refer to years.

Mr. Baker: That's right.

Mr. Hall: The plaintiffs rest.

(Thereupon the Plaintiffs rested.)

Mr. Baker: I have a motion to make, if the Court please, which I would prefer to make in the absence of the Jury. [198]

The Court: Very well, the Jury may be excused at this time with the admonition that you are not to discuss this case amongst yourself or with anyone else or to permit any person to discuss this case with you or in your presence. Furthermore, you are not to form or express any opinion on the merits of the case until it has been finally submitted to you for your deliberation. You are now excused until called by the Court.

(Jury out.)

DEFENDANT'S MOTION FOR DIRECTED VERDICT

Mr. Baker: If the Court please, the plaintiffs having rested now, therefore at the close of the plaintiffs' testimony the defendant moves the Court to direct a verdict in favor of the defendant on each of the causes upon the following grounds and for the following reasons:

One, there is no evidence adduced by the plain-

tiffs showing any negligent act on the part of the defendant.

Two, there is no evidence adduced by the plaintiffs showing that there was any excessive rate of speed.

Three, that it affirmatively appears from the testimony that any act upon the part of the [199] defendant, whether negligent or not, was not the proximate cause of the accident and injuries in question.

Four, upon the further ground that it affirmatively appears from the plaintiffs' testimony that the sole and proximate cause of the accident and injuries in question was not any negligent act upon the part of the defendant, but was by reason of the acts of a third person not under the control of the defendant.

Five, on the ground that the plaintiffs have not carried the burden of proof required of it in that they have not shown by a preponderance of the evidence that the defendant was negligent in any respect pleaded in the complaints, and they have not shown by a preponderance of the evidence that any act upon the part of the defendant was the proximate cause of the accident and the injuries in question.

That is the motion that I desire to present my argument on.

(Argument of counsel to Court.)

The Court: Well, we know that every case is judged by the evidence that is brought forth in the case. Now, there are no two cases exactly alike. The situations may be similar. In the [200] Alex-

ander case there are some similarities, but the facts are not as they are in this case. I hesitate to take the case away from the Jury. The Jury is called here to decide the issues in this case, and I think there are enough facts here to entitled the case to go to the Jury, the facts thus far brought forth. The motion is denied.

Mr. Hall: If the Court please, when would you want us to come back to start the argument?

The Court: He is still—

Mr. Hall: I meant to start the evidence.

The Court: I understand. Now, do you want to come back at one-thirty or one-forty-five?

Mr. Baker: I prefer one-forty-five.

The Court: I would like very much to complete the taking of the arguments and the evidence. How many witnesses do you have, Mr. Baker?

Mr. Baker: I only have two.

Mr. Fowler: And a deposition.

Mr. Hall: Do you think we can go ahead with our arguments and the instructions, too?

The Court: The instructions are being, as discussed, the instructions are being formulated and some of them that need typing are being typed. If you come in by one-forty-five you can look at them. I have done everything we have set out to do in our conference with reference to the instructions.

Well, we will take the recess.

The Bailiff: Do you want the Jury in?

Mr. Baker: You can tell them—I will stipulate you can tell them that—the Bailiff can tell them to come back at 1:45.

Mr. Hall: We will stipulate.

(Jury in.)

The Court: We told the Jury—I think you better call them in.

The Court: It is stipulated that all the Jurors are present?

Mr. Baker: Yes, sir.

Mr. Hall: Yes, sir.

The Court: I think we have so stipulated on every session. Sometimes I can't keep track of it.

Mr. Baker: It may be stipulated as so, if we haven't.

Mr. Hall: Unless there is some—the Jurors were always present.

The Court: Gentlemen, we are going to take a recess until 1:45 and you are again excused until that time with the same admonition heretofore given. Is it necessary to repeat the admonition?

Mr. Baker: No.

The Court: Do you stipulate?

Mr. Hall: We stipulate.

The Court: Other than by reference, the admonition given you at each session, which I asked you to observe. You are now excused until 1:45.

(Thereupon Court adjourned at 11:55 o'clock a.m. and reconvened at 1:45 o'clock p.m.)

Afternoon Session

(Conference on instructions held in the Court's chambers.)

Mr. Hall: I stipulate for and on behalf of Mrs. Rhodes.

Mr. Fowler: And so do we on behalf of Mr. Rumeh.

Mr. Baker: And the defendant offers no exceptions to the instructions proposed to be given to the Court.

The Court: As exhibited by counsel at this conference. You want to say that you have withdrawn—

Mr. Baker: You have marked them.

The Court: The record should show.

Mr. Baker: The defendant withdraws his requested instructions No. 9. I think it was No. 9.

The Court: And do you want to stipulate that the instructions which you have inspected shall be given in lieu of those requested on both sides?

Mr. Fowler: That's right. We stipulate.

Mr. Baker: Will you read that please.

(Record read by the Reporter.)

Mr. Carlton: We do.

Mr. Baker: Yes.

Mr. Hall: Yes.

The Court: You can inspect them again before they are read and see that they are the ones that you have agreed upon.

Mr. Hall: At this time, if the Court pleases, on behalf of the plaintiff, Mrs. Rhodes, I will to make a motion to amend her complaint, to amend the Prayer of her complaint as follows:

"Wherefore, Plaintiff demands judgment against the defendant in the sum of \$25,050 and for her costs incurred herein."

Mr. Baker: Is that your motion to amend in that respect?

Mr. Hall: Yes, sir. And this motion is made in order that the pleadings may conform to the proof heretofore offered by the plaintiffs.

Mr. Baker: We resist the motion and the amendment on the ground that there is no proof requiring [204] an amendment to the pleadings. The evidence is that the lady was a housewife; no loss of earnings; no loss of time; no reason to amend the Prayer of the Complaint to conform to any proof.

Mr. Hall: Further, if the Court please, it is our contention that the Prayer is really no part of the complaint and may be amended at any time by the plaintiff without regard to proof.

Mr. Baker: Why do you amend it then?

Mr. Hall: In order that the Court may instruct the Jury as to the demands of the plaintiffs.

The Court: Well, the demands generally are more in the nature of claims.

Mr. Baker: That's right.

The Court: The model of the demands is not to be taken as evidence of any specified amount in which—is an issue, but serves as a claim upon the part of the plaintiff or allotment; that is the purpose of it, and the Jury can't bring in a verdict in excess of that amount or claim or demand. I assume that they—that your theory in proposing that amendment is that you are now restricted to recover under your pleadings in the sum mentioned in your complaint unamended.

Mr. Hall: Yes. [205]

The Court: And that a verdict beyond that amount would not be a proper verdict; is that your contention?

Mr. Hall: Yes. Off the record, please.

(Further discussion had off the record.)

Mr. Hall: Your Honor, if the Court please, I would like to make it in the form of an amendment, whether it is necessary or not.

The Court: Well, the courts are liberal with amendments.

Mr. Baker: If necessary to conform to proof, but does the proof justify an increase in his demand?

Mr. Hall: Of course, that is a question for the Jury. I don't know what a broken back is worth, nor does anybody else.

Mr. Baker: You allege it in your complaint.

The Court: I am inclined to grant the motion. Will you file your written amendment?

Mr. Hall: I will during the course of the trial.

The Court: You may do that later.

Mr. Hall: Is it necessary to re-write the entire complaint?

The Court: No, just this amendment. [206]

Mr. Fowler: Now, then, if the Court please, may we also have a stipulation between the counsel for the defendant, Mr. Baker, and ourselves, in the Rumeh case, Mr. Carlton and Mr. Fowler, that the amount owed Dr. Long of El Paso by George Rumeh is the sum of \$350?

Mr. Baker: It is so stipulated.

The Court: You can renew that in the presence of the Jury. The Jury should hear that stipulation.

Anything further, gentlemen?

Mr. Baker: That is all.

The Court: Is it stipulated that all the jurors are present?

Mr. Baker: Yes.

Mr. Hall: Yes, Your Honor.

The Court: Is there a stipulation that you desire to have read or repeated in the presence of the Jury?

Mr. Fowler: Yes, if the Court please, it is stipulated between counsel for the defendant, Mr. Alexander Baker, and ourselves, Mr. Carlton and myself, on behalf of George Rumeh, that Mr. Rumeh paid or owes Dr. Long of El Paso the sum of \$350.

Mr. Baker: It is so stipulated.

The Court: Are you ready to proceed? [207]

Mr. Baker: Yes, Your Honor. The plaintiffs have rested, I understand.

Mr. Fowler: Yes, we have rested.

Mr. Baker: May I make a brief statement to the Jury of what I expect to prove?

The Court: You may.

DEFENDANT'S CASE

(Thereupon counsel for the defendant made an opening statement to the Jury.)

The Court: You may call your first witness.

Mr. Baker: I will call Mr. Boone.

WILLIAM M. BOONE

called as a witness on behalf of the defendant, being first duly sworn, was examined and testified as follows:

(Testimony of William M. Boone.)

Direct Examination

By Mr. Baker:

Q. State your name, please?

A. William M. Boone, Jr.

Q. Where do you reside, Mr. Boone?

A. At 1720 West Elm Drive, Phoenix, Arizona.

The Court: Will you spell your last name, please?

The Witness (spelling): B-o-o-n-e.

Q. What is your age, Mr. Boone?

A. I am now 29 years of age.

Q. By whom are you employed? [208]

A. The Salt River Valley Water Users Association, Light and Power Company and Irrigation District at Phoenix.

Q. At Phoenix? A. Yes.

Q. In what capacity?

A. Power services and irrigation water.

Q. How long have you been employed by the Water Users Association?

A. Well, let's see, it was August 28, 1939.

Q. Have you heard all the testimony in this case, Mr. Boone?

A. Yes, sir, I have been here through most all the testimony.

Q. And you have heard the accident described?

A. Yes, sir.

Q. You heard the bus described—

A. Yes, sir.

Q. That was involved? A. Yes, sir.

Q. Were you on that bus? A. Yes, sir.

(Testimony of William M. Boone.)

Q. And at that time where was your residence?

A. I had just been discharged from the army, but my residence was considered the same as it is now. [209]

Q. And this accident occurred on March 25, 1946, did it, Mr. Boone?

A. Yes, sir, to the best of my knowledge.

Q. Where did you board the bus?

A. At Phoenix, Arizona.

Q. You were destined to what point?

A. Charlotte, North Carolina.

Q. Was Mr. Bach driving the bus when you left Phoenix?

A. I understood—no, sir,—excuse me.

Q. He was not? A. He was not.

Q. Where did he take charge of the bus, if you know? A. I don't.

Q. You don't know? A. No.

Q. You do know Mr. Bach, now?

A. I know him now.

Q. Did you know him at the time of the accident?

A. I didn't know him personally. I understood from the driver that he was the driver of the bus. I was naturally interested to know who was driving the bus.

Q. You recall the bus making a stop at Deming?

A. No, sir, I could not. [210]

Q. Do you know approximately where the accident happened? A. Yes, sir.

Q. Where?

(Testimony of William M. Boone.)

A. Approximately 8 miles west of Las Cruces, New Mexico.

Q. Now, before the time of the accident, where were you sitting?

A. I was sitting on the right-hand side of the bus itself, about middleways back in the seat next to the center aisle. The bus was not occupied with very many passengers and I had a seat all to myself.

Q. You were sitting next to the aisle?

A. Next to the aisle.

Q. You say you were half way back in that bus?

A. Yes; I am not sure; about four or five seats back.

Q. From the driver?

A. From the front. I was on the opposite side of the driver.

Q. State, if you know, at what rate of speed the bus was traveling before the time of the accident.

A. I estimated that speed at approximately 40 to 45 miles per hour.

Q. I will ask you whether or not there was anything in connection with the operation of the bus before [211] the time of the accident that gave you any sense of danger or fear of any kind?

A. No, sir.

Q. Now, Mr. Boone, will you please state exactly what you first observed and what occurred at this time at this point 8 miles west of Las Cruces? First, I will ask you what time of day it was?

A. It was late in the afternoon. I didn't know

(Testimony of William M. Boone.)

the exact time, but I heard that the accident happened at 6:10.

Q. Was it broad daylight? A. Yes, sir.

Q. Was the road at that point straight?

A. Yes, sir.

Q. Well, now, state—first, I will ask you, if you observed a car approaching the bus from the east, that is, proceeding in a westerly direction?

A. Yes, sir, I did.

Q. Do you know what kind of a car that was?

A. I didn't know the make. I know that it was a brown coupe.

Q. What caused you — now, where was that brown coupe when you first observed it with reference to being on the north or south side of the highway?

A. It was very definitely on the north side of [212] the highway on the car's right-hand side of the road, very close to the edge of the pavement.

Q. Now, when you refer to a car, you are referring to this coupe, are you? A. Yes.

Q. Now, when you first observed it, can you estimate the distance between that car and the bus? In other words, how far was the bus from the car?

A. I estimate that distance as 60 yards, 180 feet.

Q. What first called your attention to this car?

A. A slight puff of dust that made me think that there might have been a blowout or that he had gone very close to the shoulder and picked up a puff of dirt with his right front wheel.

(Testimony of William M. Boone.)

Q. State then what happened as you observed it? Did you see that car from then on up to the time of the collision?

A. No, sir. I saw it until it disappeared under the front of the bus.

Q. You saw it up until the time the front end of the bus obstructed your view? A. Yes, sir.

Q. Describe, Mr. Boone, exactly what happened?

A. When I saw this puff of dirt come up from the right front wheel of this automobile, I saw it pull back to the paving or back towards the center of [213] the road fairly sharply and then it seemed to straighten out and come at a gradual arc across from the north side of the pavement into our line of travel. I yelled to the lady sitting across the aisle from me to look up.

Q. Never mind what the conversation was that you had. What did the bus driver do, if anything, Mr. Boone?

A. As best as I could judge, he applied the brakes and pulled sharply to the right.

Q. What was the speed of this brown coupe, if you know, compared to the speed of the bus, if you have no other way of judging.

A. I don't know the exact speed of it, but naturally I estimated the speed of the car between 45 and 55 miles per hour.

Q. That is this brown coupe?

A. That's right.

Q. Could you tell whether that coupe ever stopped or reduced its speed at any time?

(Testimony of William M. Boone.)

A. No, sir, it stands in my mind that there was no slackening of speed until it disappeared from my sight.

Q. Never slackened its speed once; that is the coupe? A. That's right. [214]

Q. What happened then, Mr. Boone?

A. We had a terrific crash and a bump, and I ducked down beneath the seat, tried to stay out of the aisle. It seemed that for about six or eight seconds we were bumping along the side of the road and then everything came to a very quiet stop.

Q. Are you able to estimate the position of the bus at the time of the impact?

A. Yes, sir, I am.

Q. And where was that with reference to the south edge of the paving, if you know?

A. As the car disappeared from my view, which was the last time I was above the seat, the right front wheels and probably the right rear wheels of the bus were on the right-hand shoulder of the road that was off the hard surface. I know that by looking down the road I could see that we had left the black top.

Q. What was that last?

(Last part of the answer read by the Reporter.)

A. The paving.

Q. By that you mean the paving? A. Yes.

Q. Where was the bus when it came to rest, if you know?

A. It was entirely off of the paved road. The

(Testimony of William M. Boone.)

front [215] end was probably two feet further off than the rear duals. It was stacked right up on top of this brown coupe with the front end entirely torn out of the bus.

Q. The front end was entirely torn out?

A. Yes, sir. One of the more remarkable parts about the accident was that you could pull that much off of the front end of the bus and do it as cleanly.

Q. What became of the driver, if you know?

A. I only knew at a later date what became of him. At that moment, at the moment of the crash, I didn't go up front. I was more or less afraid to. I thought he would be dead.

Q. Did you see him afterwards there at the scene of the accident?

A. Yes, sir, I did, and I had heard what had happened to him.

Q. What was his condition?

Mr. Hall: We object to that, if the Court please, as being hearsay.

Q. You saw him there, didn't you?

A. Yes, sir.

Q. What was his condition?

A. Well, I don't know about his physical condition. I do know that he was very gravely interested in his [216] passengers.

Mr. Hall: Just a minute, if the Court please, I ask that that answer be stricken as not being responsive. I ask that answer be stricken as not responsive and he asked him what his condition was

(Testimony of William M. Boone.)

and he stated something else other than what his condition was.

The Court: That answer may be stricken. I think he talked to passengers.

Mr. Hall: Yes, sir.

The Court: I couldn't hardly hear him myself. Read the answer, Mr. Reporter.

(Record read by the Reporter.)

The Court: That answer may stand.

Mr. Hall: Then we ask that the portion of the answer that he was gravely interested in his passengers be stricken and that the other part be stricken. My original motion was to strike the whole thing. It seems to us his interest in passengers—

The Court: That in some manner is a description of his condition. It may stand.

Q. Now, at the time you first observed this brown coupe make a turn to the left, I will ask you whether or not the driver at that time attempted to swerve to his right? [217]

A. Our driver, the bus driver?

Q. Yes. A. Yes, sir, I think he did.

Q. Do you know whether at that time he applied his brakes?

A. The first notice of application of brakes was just momentarily before the impact.

Q. Just before the impact? A. Yes.

Q. When you noticed that the brakes were taking effect, is that right? A. Yes.

(Testimony of William M. Boone.)

Q. How much time expired, Mr. Boone, from the time this brown coupe swerved to the left to the time of the impact?

A. It was all momentarily; you could hardly judge any space of time there.

Q. Was it so immediate that you couldn't judge the space of time; was that your answer?

A. Yes, sir.

Q. You drive an automobile yourself, do you, Mr. Boone? A. Yes, sir.

Q. And at the time of the accident had you been driving an automobile? A. Yes, sir. [218]

Q. I will ask you whether or not there was any thing that this driver could have done to avoid this accident, anything at that time, in your experience as a driver? A. In my opinion—

Mr. Hall: Just a minute. If the Court please, we object to that question as calling for an opinion of this witness.

The Court: Sustained.

Mr. Baker: You may cross-examine.

Cross-Examination

By Mr. Fowler:

Q. Mr. Boone, where do you live in Phoenix?

A. 1720 West Elm Drive.

Q. When did you live there; when?

A. Since the place was built in 1941, except for the time I spent in the army.

Q. How long were you in the army?

A. Thirty-one months.

(Testimony of William M. Boone.)

Q. Were you there in October of 1946?

A. Yes, sir.

Q. You were in North Carolina?

A. Yes, sir, and down to North Carolina.

Q. You had come home from North Carolina to see someone in Phoenix in March, 1946?

A. In April. [219]

Q. In April? A. Yes, sir.

Q. You stayed there from April until March 25, is that right? A. That's right.

Q. And you went back to North Carolina, is that right? A. Wait a minute now—

Q. From April, 1946, until you left on March 25?

A. I went in March, I went to North Carolina, I went back the—

The Court: Just a minute; I can't hear you. Speak a little louder, please.

The Witness: Do you want me to repeat it?

Q. No, just speak up. You had been in Phoenix up until March, 1946? A. Yes, sir.

Q. How long had you been there?

A. About two weeks.

Q. Visiting some members of your family?

A. Well, I was getting my army stuff straightened up, getting my sugar rations and so forth.

Q. And then you returned to North Carolina in March, 1946? A. Yes, sir. [220]

Q. And then when did you come back to Phoenix? A. In April.

Q. The next month? A. Yes, sir.

(Testimony of William M. Boone.)

Q. Were you discharged?

A. I had already been discharged.

Q. Had your father recently died?

A. My father died, well, during the war, back in 1941.

Q. You don't know Mrs. Ana M. Boones?

A. No, she is not one of our Boones.

The Court: I am going to ask both of you gentlemen to speak up.

Mr. Fowler: Thank you.

Q. Well, you got on the bus in Phoenix, is that right? A. Yes.

Q. With a ticket to where?

A. To what destination?

Q. Yes, sir. A. Charlotte, North Carolina.

Q. Change buses at El Paso?

A. I don't know whether we were supposed to or not. I think we did.

Q. You weren't injured, were you?

A. Will you repeat that? [221]

The Court: Read the question, Mr. Reporter.

(Last question read by the reporter.)

A. Only slightly.

Q. You did not—you weren't taken to the hospital in Las Cruces, were you? A. Yes, sir.

Q. By Captain Salas?

A. I came in on a bus that was sent out to pick up the uninjured passengers.

Q. The uninjured?

A. Well, the less injured, we will say.

Q. Then, were you looked over in Las Cruces?

(Testimony of William M. Boone.)

A. Yes, sir.

Q. Given some first aid? A. Yes, sir.

Q. You were cut on the face by the seat?

A. By my fingers, I presume. I had my hand up in front of my face.

Q. And dug in? A. Yes.

Q. When was that?

A. That was at the moment of the impact.

Q. You were down between the seats?

A. Yes.

Q. You knew there was going to be an impact?

A. Yes.

Q. How did you know that?

A. He was right in our face there. He couldn't get around us.

Q. Hadn't the car then disappeared underneath the hood of the bus? A. It had.

Q. How long before you got out?

A. Just as it went under the hood of the bus.

Q. How far was that from the bus?

A. I could only guess; it could be scientifically determined.

Q. How far would you estimate?

A. About, oh, I would say 15 yards ahead of the bus.

Q. About 60 feet? A. Forty-five feet.

Q. Twenty-five feet?

A. Forty-five feet, 15 yards.

Q. And it came from his side of the road?

A. Whom do you refer to as "him"?

Q. The brown coupe.

(Testimony of William M. Boone.)

A. The coupe came from its north side of the road to our south side of the road.

Q. Directly? A. On a long arc. [223]

Q. On a long arc? A. Yes, sir.

Q. How had it been traveling before it reached the bus? A. That would only be a supposition.

Q. Well, tell me what you saw.

A. The first time I saw it, it was on its side of the road.

Q. It was on the north side?

A. On the north side.

Q. And the bus was on the—

A. South side.

Q. South side. They were just driving along as two cars would? A. That is correct.

Q. It never wobbled at all?

A. I couldn't say that it did.

Q. Well, would you say that it did not at all?

A. I would.

Q. And that condition existed up until about 45 feet in front of the bus? A. No, sir.

Q. Well, how long?

A. Where it started to come towards us was just inside of approximately 60 yards ahead of the bus. It took a long arc and ended right up at our front door. [224]

Q. What did you say the driver did?

A. Applied his brakes and pulled to the right.

Q. When did he apply his brakes?

A. Just fractionally before the car hit us.

(Testimony of William M. Boone.)

Q. You were down then between the seats, I take it? A. Yes.

Q. With your fingernails up in your forehead?

A. They must have been.

Q. When the impact happened like that, you dug them into your face, is that right? A. Yes.

Q. Would you say a half second before the impact? A. What half second?

Q. When the driver applied his brakes.

A. I would say that it was less than that before the impact.

Q. A quarter of a second?

A. That is too fine for my knowledge, but it was just like that (witness makes sounds like a smack).

Q. Could you distinguish between the application of the brakes and the impact of the car?

A. I thought that I could.

Q. You thought that you could? [225]

A. Yes.

Q. What do you think about it now?

A. I still think—

Mr. Baker: Just a minute; that is argumentative.

Mr. Fowler: He said he thought, so, I want to know what he thinks now.

The Court: You may proceed.

Q. Did he ever apply the brakes before?

A. Not to my knowledge.

Q. Didn't he apply them back about 260, 300 feet?

A. If he did, it was without my knowledge.

(Testimony of William M. Boone.)

- Q. Were you sleeping? A. No, sir.
- Q. What were you doing?
- A. Talking to the lady across the aisle from me.
- Q. Who was the lady across the aisle from you?
- A. I don't know her name.
- Q. Did you see her in the courtroom?
- A. Well, I wouldn't recognize her.
- Q. You don't know what her name was?
- A. No.
- Q. Were you sitting next to the window or next to the aisle? A. Next to the aisle.
- Q. Who was sitting next to the window?
- A. No one. [226]
- Q. You moved over to talk to the woman?
- A. Yes.
- Q. Was she young? A. No, sir.
- Mr. Fowler: I want to identify her. Would you say her name was Tuck? A. No, I would not.
- Q. You wouldn't say what her name was?
- A. I would say that it wasn't Tuck.
- Q. Did she have anybody riding with her?
- A. No, sir.
- Q. How far back were you.
- A. I was five or six seats back of the front seat on the right-hand side of the bus.
- Q. You were on the opposite side of the driver?
- A. Yes.
- Q. And she was on the same side as the driver?
- A. Yes.
- Q. Were you busily engaged in conversation with her? A. Yes.

(Testimony of William M. Boone.)

Q. So, you didn't have any conscious recollection of the application of brakes back about a block, we would say.

A. That is what I said; it was without my knowledge if he applied the brakes beforehand. [227]

Q. You wouldn't say, then, that he didn't make the application? A. I would not.

Q. Where did this woman get on the bus?

A. That I don't know.

Q. Well, let us refresh your recollection; at Phoenix? A. Well, I couldn't say.

Q. Well, this side of Phoenix?

A. I think it was east of Phoenix someplace, but I don't know exactly where.

A. Well, Safford? A. I don't know.

Q. Lordsburg? A. I don't know.

Q. Deming? A. I don't know.

Q. You were about half way in the bus, then?

A. Yes.

Q. Five or six. Were there people between you?

A. Yes, sir.

Q. Did you see Mr. Rumeh there?

A. Not to my recollection.

Q. Rumeh is the man that sits behind me.

A. Yes, I know. [228]

Q. You didn't see him?

A. I don't remember him.

Q. You don't remember his getting on the bus at Globe, do you? A. No.

Q. Did you see him out on the ground in front of the bus? A. No.

(Testimony of William M. Boone.)

Q. Where did see Bach or Back, the driver?

A. Standing by the corner of the bus.

Q. You didn't see him on the ground, then?

A. No.

Q. You were still behind the seats?

A. I stayed in the bus until Captain Salas called us and told us to march and get on another bus.

Q. Anybody else in the bus? A. Yes.

Q. Did you see anybody in the bus besides you, then? A. I saw Mrs. Tuck.

Q. Do you know Mrs. Tuck when you see her?

A. Yes.

Q. Is she in the courtroom now?

A. She is back there (indicating).

Q. All right, go ahead.

A. I saw an unidentified couple with a small baby sitting behind me, and I performed some first [229] aid on the lady across the aisle.

Q. The one you had been talking to?

A. The one I had been talking to. I saw a sailor boy sitting behind me on the opposite side. I remember a young WAC that was sitting up in front of the bus, all of whom I don't know their names, and that is about all I remember.

Q. Was Mrs. Tuck sitting behind you?

A. No, sir, not to my knowledge. She was ahead of me on the opposite side of the bus.

Q. She was ahead on the left side?

A. Yes.

Q. On the same side as the driver?

A. That is what I mean.

Q. Did you see her down between the seats?

(Testimony of William M. Boone.)

A. No, sir.

Q. Maybe you and she got on at the same time?

A. Could be.

Q. That is when the driver made the first application of the brakes, at least 260 feet?

Mr. Baker: Wait a minute; we object: he never testified to anything. He testified if there was any brakes applied 260 feet, he didn't know anything about it.

Mr. Fowler: I was trying to test his credibility.

The Court: I think that question is objectionable.

Mr. Fowler: All right.

Q. Did you see her after the impact?

A. Who?

Q. Mrs. Tuck?

A. Yes, sir. She was passing out first aid, I believe.

Q. Where were you standing?

A. I was standing by the lady across the aisle from me.

Q. Trying to give her first aid? A. Yes.

Q. Did you see Mrs. Tuck bleeding about the month? A. Not to my knowledge, sir.

Q. Did you notice she had a tooth out?

A. No, sir. I heard she did, but I didn't notice it.

Q. When did you hear that?

Mr. Baker: We object to that as wholly immaterial and irrelevant.

The Court: Overruled.

Q. When did you hear that?

A. Later on in the bus amongst the passengers, that took us on in to the hospital.

(Testimony of William M. Boone.)

Q. Did she go with you then?

A. I don't know, sir.

Q. You don't know what became of her after you talked to her in the bus?

A. I can't remember if I did. [231]

Q. Did you see her get the first aid?

A. No, sir.

Q. Where were you?

A. Standing by the lady across the aisle from me.

Q. What were you doing to the lady across the aisle from you?

A. Attempting to stop some bleeding on the calf of her right leg.

Q. How about the baby with her?

A. There wasn't anything.

Q. There was a baby. You testified there was a baby. What happened to the baby?

Mr. Baker: He didn't testify to such a thing.

Mr. Fowler: He said that there was a baby sitting alongside of some woman on the bus.

Mr. Baker: I object to that; he never testified to that.

The Court: He testified that there was a woman.

Mr. Baker: He said that there was a couple sitting behind him with a baby.

The Court: Proceed with your examination.

Q. What happened to the babies?

Mr. Baker: What babies?

Q. The baby on the seat behind him; that is what he said.

A. There was only one and it was the luckiest

(Testimony of William M. Boone.)

[232] person in the bus. It was the least of the ones hurt.

The Court: Just a little louder; don't mumble your words.

- Q. Was it a boy or a girl? A. I don't know.
- Q. Did you ever see the baby?
- A. Yes, sir, I saw the baby.
- Q. You don't know whether it was a boy or a girl?
- A. That is what I said in the last question.
- Q. How old was the child?
- A. I don't know.
- Q. Was it seated with a man or a woman?
- A. With both; I took them to be the father and mother.
- Q. Oh, I see. How about the sun.
- A. (No answer.)
- Q. The sun (spelling) s-u-n?
- A. I don't know.
- Q. You don't know whether it was high up or low down or what? A. It was fairly low down.
- Q. Where you heading into it?
- A. That I don't know.
- Q. Was it back behind you?
- A. I don't know that.
- Q. Do you know what time the accident happened at all? [233] A. I have heard.
- Q. Did you have a watch? A. Yes.
- Q. The same watch you have got there now?
- A. Yes.
- Q. Did you look at it?
- A. Not to my knowledge.

(Testimony of William M. Boone.)

Q. When was the last time that you looked at it?

Mr. Baker: I don't think there is any dispute as to when the accident happened. What is the purpose of this?

Mr. Fowler: This, after all, if the Court please, is cross-examination of this witness. This witness is very hostile to my cause.

Mr. Baker: I object to his telling him he is hostile. The man tells the truth.

The Court: If you are testing his recollection, I wouldn't go too far afield.

Q. You don't remember what time it was or where the sun was or anything except that the car was coming at you when you first saw it, about 60 yards, is that right? A. That's right.

Q. On his right side of the road? A. Yes.

Q. You don't remember the application of the brakes [234] back west there, do you?

Mr. Baker: I object.

The Court: The last part of your question—

Mr. Baker: I object to his remembering. He said that he didn't remember any brakes being applied.

Mr. Fowler: He doesn't know.

Mr. Baker: He said—

The Court: I can't keep track of your questions. If there is an objection I will pass on it, but I don't like to hear this conversation back and forth. Make your objections and I will pass on your objections. Go ahead.

Q. Were you in uniform? A. Yes, sir.

Mr. Fowler: You may cross-examine.

(Testimony of William M. Boone.)

Mr. Hall: If the Court please, I would like to cross-examine this witness for and on behalf of Mrs. Rhodes.

The Court: You may.

Mr. Baker: Cross-examine?

Mr. Hall: Yes.

Cross-Examination

By Mr. Hall:

Q. Mr. Boone, do you know whether or not you were on time, whether or not the bus was on time when it [235] left Deming?

A. No, sir, I do not. I was in for a long trip; it didn't particularly bother me.

Q. Will you estimate the speed again of the bus at the time of the accident or just immediately prior thereto?

A. Will you repeat that question, please?

Mr. Hall: Will you read the question, Mr. Reporter, please?

(Last question read by the Reporter.)

A. I estimated it at between 40 and 45 miles per hour for the bus.

Q. You don't think it was going over 40 miles an hour, do you?

A. I can only say that I estimated it at between 40 and 45 miles per hour. If I could get that close to it—

Q. You testified in cases growing out of this accident before, haven't you, Mr. Boone?

A. No, sir, this is the first time only.

Q. This is the first time? A. Yes.

(Testimony of William M. Boone.)

Q. Who had you ever told what the speed of this bus was, before coming here today?

A. Probably my family. [236]

Q. And no one else?

A. Authorized representative of the Greyhound Bus Company, that talked to us.

Q. Mr. Baker?

The Court: Will you please keep your voice up. I have difficulty hearing you. You are all right for a while and then you drop your voice.

Mr. Baker: He told me, too.

Q. Now, Mr. Boone, was this bus going any faster or any slower at the time just prior to the accident than it had been going from Deming to the point of the accident? A. I couldn't say, sir.

Q. Had you noticed the speed of this bus after it left Deming except at this particular point?

A. Well, momentarily.

Q. How did you determine the speed of this bus at that particular time?

A. Well, I don't know; it is in your brain, I guess. When you see something is going to happen, certain things register on your brain.

Q. Well, as a matter of fact, you are very anxious to help the Greyhound Bus Lines?

A. No, sir; my only interest is in a straightforward tale of what happened. [237]

Q. How long have you been in Tucson attending this trial? A. Since Sunday.

Q. Who is paying your expenses?

A. I am at the present time.

Q. You expect to be repaid for them, don't you?

(Testimony of William M. Boone.)

A. I do.

Q. You haven't brought any suit against the Greyhound, have you? A. No, sir.

Q. And you don't intend to? A. No, sir.

Q. Did you talk to Captain Salas?

A. Yes, sir.

Q. When?

A. Oh, for three or four days I had a passing conversation with him every day.

Mr. Hall: Take the witness.

Redirect Examination

By Mr. Baker:

Q. You were asked the question, if you had sued the Greyhound Lines or intended to. Why don't you intend to sue the Greyhound Lines, Mr. Boone?

A. I figure I am an awfully lucky boy being here today and I don't believe in pushing my luck too far.

Mr. Fowler: That is all.

Mr. Baker: Just a minute.

The Court: That is all.

Mr. Fowler: Mr. Baker wanted another question.

Mr. Baker: Oh, I think that is all from Mr. Boone.

May Mr. Boone be excused?

Mr. Fowler: Yes.

CODY BACH,

called as a witness on behalf of the defendant, having been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Baker:

Q. State your name, please?

A. Cody Bach.

(Testimony of Cody Bach.)

Q. Your age? A. Thirty-seven.

The Court: How do you spell that name?

The Witness: (Spelling) B-a-c-h, your Honor.

Q. Where do you live?

A. 240 East Twelfth Street, Tucson, Arizona.

Q. Your occupation?

A. Bus driver for the Pacific Greyhound Lines.

Q. How long have you been employed by the Pacific Greyhound Lines? A. Since 1940.

Q. As a driver? A. As a driver.

Q. How many years' experience have you had as a bus driver altogether?

A. That is my first bus driving, but I have driven long trucks all my life.

Q. You have driven trucks most of your life?

A. Yes.

Q. You started bus driving in 1940?

A. Yes.

Q. Were you in the service?

A. Yes, three years.

Q. During what years were you in the service?

A. Forty-two and '43. I went in in '42 and came out in '45.

Q. Were you driving vehicles while you were in the service?

A. Yes, we had some of the army equipment to handle.

Q. You have heard the testimony in this case, have you not, Mr. Bach? A. Yes.

Q. All of the testimony? A. Yes.

Q. You are familiar with the accident that has [240] been described? A. Yes.

(Testimony of Cody Bach.)

Q. Were you driving the bus on that day?

A. Yes, sir.

Q. That is, March 25, 1946? A. Yes, sir.

Q. Where did you take charge of the bus?

A. Safford, Arizona.

Q. What was your tour of duty at that time?

A. Safford, Arizona, to El Paso, Texas.

Q. How long had you been rested before you took out this bus at Safford?

A. Well, you are required eight hours, so I had had at least eight hours.

Q. Before you took the bus at Safford?

A. Yes, maybe more: I don't recall the exact amount, but that is what you are required.

Q. What stops did you make on this day between Safford and the point of the accident?

A. Well, all my regular scheduled stops; Duncan, Lordsburg, Deming, Las Cruces, and El Paso. Those are the regular ones unless something occurs otherwise.

Q. Now, before the time of this accident, at what rate of speed were you traveling, Mr. Bach?

A. You mean before the accident occurred? [241]

Q. Yes.

A. Well, our average speed is 50 miles per hour. Our schedule is set for that, this average speed.

Q. You estimate that is what you were traveling, about 50 miles per hour?

A. Well, you would go that fast or sometimes faster, but that is an average speed.

Q. Did you see a car approaching that afterwards collided with you?

(Testimony of Cody Bach.)

A. Are you speaking of the time of the accident now?

Q. Yes.

A. Ten miles from Las Cruces this accident occurred.

Q. What was that, a Ford or what?

A. Well, at the time you wouldn't tell, but I seen later it was a Ford.

Q. Do you know whether it was a sedan or coupe?

A. Well, I am not certain.

Q. All right, now, before you observed this car, this Ford—we will refer to it as a Ford—did you pass any other vehicles on the road?

A. Well, how close a distance to this accident are you referring to, now?

Q. Well, did you pass anybody on the road?

A. I passed many a car on the road.

Q. Well, did you pass some car just shortly before [242] the time that you saw this Ford?

A. Well, just before the accident, I passed a trailer.

Q. Just state what you did when you passed the trailer?

A. In this particular case, you—as a rule—you just never slack up; you go by. In this particular case there was oncoming vehicles, so, it caused me to slow up. In that case, you see, you always shift into third gear because of the weight of the bus. You can't stay on like you do in a car, but you step down according to the speed.

Q. In this particular case, did you shift to third gear?

(Testimony of Cody Bach.)

A. I had to. When you get below 30, 40 miles per hour, you are required to shift into third gear. It is too slow to shift into high. You shift into third gear. But I had to get it back into high gear. It takes a time to roll because it is heavy equipment.

Q. At the time you observed this car, had you picked up your speed?

A. No, this was only a half mile after I passed this trailer, the accident occurred. It would take about that or longer to get going in full force again. [243]

Q. So, you hadn't picked up your full speed at the time? A. Well, not my full speed, no.

Mr. Fowler: We don't like to object, but he is leading the witness. We object to it.

The Court: It is somewhat leading.

Q. Well, state where this Ford was when you first observed it, Mr. Bach?

A. Well, I saw this Ford when I passed the trailer, a half mile down the road. It was the only oncoming vehicle at the time, coming down that particular stretch.

Q. How far were you from it?

A. Approximately a half mile.

Q. Where was the Ford at that time?

A. On its side of the road.

Q. By that you mean north or south of the road?

A. Let's see, it runs east and west there; it would be on the north side of the road.

Q. Well, did you see that Ford from then on; did you observe it? A. Yes.

Q. That was the only approaching vehicle, did I understand you correctly?

(Testimony of Cody Bach.)

A. That was the only approaching vehicle at that time.

Q. When you observed it for a half a mile, did you [244] see it from then on?

A. Oh, yes, the road is very clear from there on. You can see it if your vision is good.

Q. What was it with reference to daylight or night?

A. The sun set about 6:30, so, it was very low. The full sun was up yet.

Q. Was it broad daylight?

A. Broad daylight.

Q. Was the road straight or curved?

A. Straight.

Q. Was there anything to obstruct your view of this Ford that was approaching?

A. Nothing, after I passed the trailer.

Q. You saw it all the time?

A. That's right.

Q. Did you observe that Ford do anything on the part of that Ford that caused you to believe that there may be some danger? A. Nothing.

Q. That is at first. Did you at any time observe anything?

A. Only until before the collision is the first.

Q. Well, that is what I am referring to.

A. Well, within, I would say, approximately 40 to 50 feet, it suddenly swerved in front of the bus and [245] that was the first indication that he ever give that he was coming over.

Q. How far were you from the Ford?

A. Well, that is hard to say.

(Testimony of Cody Bach.)

Q. I believe you said 40, 50 feet?

A. That is what I say; that is the reason I say at the time he gave the indication, it was just 40, 50 feet.

Q. Did he ever give any warning at any time that he intended to make a left-hand turn?

A. None whatever. He just turned the car over there.

Q. What rate of speed was he traveling, if you know? A. I wouldn't know; a fast rate.

Q. The car was approaching, is that right?

A. Yes.

Q. Are you able to very accurately judge the speed of a car when it is coming to you?

A. Well, within ten miles probably.

Q. Well, now, what did it do? You say that he swerved to you or swerved into you?

A. Well, it was what you call a three-quarter angle; that is, sharp as you cut a car, if you cut it at a three-quarters angle, it doesn't take very long to get across the road. [246]

Q. You say he cut it at three-quarters of an angle?

A. He cut it at three-quarters of an angle.

Q. When you first observed him making this cut, what did you do, Mr. Bach, with your bus?

A. Well, I started pulling to my right and I guess anyone would do the same thing; if you are on that side of the road and see anything coming towards you, that is the first thought you have.

Mr. Hall: We object to what his imagination—

Mr. Baker: Yes, just answer the question.

(Testimony of Cody Bach.)

The Court: The objection is well taken. The answer is stricken.

Q. I will ask you again what you did do when you observed this Ford cut his car on this angle to his left? A. Pull sharply to the right.

Q. Did you do anything else?

A. Well, I wouldn't recollect; I imagine I would go for the brake, that is the usual—

Mr. Hall: We object and we ask that, "I imagine I would go for the brake," be stricken.

The Court: That may be stricken and the jury is instructed to disregard it.

Q. What happened then, Mr. Bach? [247]

A. Well, in a few seconds, that is all there was to it. The car ran under the front end of the bus and that is all I can tell you.

Q. Do you have any independent recollection other than from examination of the road as to where you were when the Ford ran into you?

A. Yes; I would say that my front wheels were off of the pavement and I wouldn't say about the back; I would say the fronts were off.

Q. Off the paving, you mean the south edge of the paving?

A. On my right-hand side of the road, my front wheels were off.

Q. What do you next remember after the impact, or do you remember the impact at all?

A. Well, I knew I was going to hit it. I just remember that he was going to hit us. The next I remember I was sitting in front of the bus looking back.

(Testimony of Cody Bach.)

Q. That is the next thing you remember, you were sitting, lying in front of the bus?

A. That's right.

Q. You had no recollection of the accident?

A. Well, just the crash and that is all.

Q. Mr. Bach, from your experience as a driver, I will ask you whether there was anything you could have done to have avoided that impact? [248]

Mr. Hall: Just a minute; we object to that question as being improper, irrelevant, incompetent and immaterial.

The Court: I think that is a matter for the jury to determine; objection sustained.

Q. Mr. Bach, presuming that you just put on your brakes and stayed in the road without pulling to your right, do you know what would have happened?

Mr. Hall: I make the same objection and the citation or our authority in that case is the Universal Smelters.

The Court: Objection sustained.

Mr. Hall: It is not within the province of this witness to answer a question of that kind.

Mr. Baker: You may cross-examine.

Cross-Examination

By Mr. Carlton:

Q. Mr. Bach, you were thrown out of the bus?

A. That is right.

Q. What threw you out? A. The impact.

Q. And when you hit that Ford, if it was a Ford, that is what threw you out?

A. I would say that is it.

(Testimony of Cody Bach.)

Q. Where the bus went from the time of the impact [249] to where it stopped, it didn't have a driver? A. That's right.

Q. Then, it went right where the wheels were setting at, didn't it? A. Yes, sir.

Q. Mr. Bach, how long is that bus?

A. Thirty-eight feet.

Q. How wide is that bus?

A. Approximately 8 feet.

Q. Mr. Bach, at the time you first saw this on-coming Ford, were you driving with your left wheels on your side of the center mark or line of the street or highway? A. My left wheels?

Q. Yes. A. Yes.

Q. Now, how close would you say your left wheels were to the center stripe of the road?

A. Well, now, let's see—that there is a long question. You see, the pavement is about 18, 20 feet there, so, you see, that would give you a lot of room. I would say within a foot of it.

The Court: You asked, was there a center line? Was there a center line?

Mr. Baker: I don't believe so.

Mr. Carlton: Well, whether it is real or [250] imaginary, there is a center.

Mr. Baker: I don't believe there was.

Q. The next question, Mr. Bach, this Ford that you saw coming, how close do you estimate that Ford's left wheels were to that center line, whether real or imaginary?

A. Well, I wouldn't say.

(Testimony of Cody Bach.)

Q. Well, was it closer to the center line than it was to the north edge of the pavement?

A. I would say he was right in his direct line of traffic where he was supposed to be.

Q. You think he was, then an equal distance from the center strip to the edge of the pavement?

A. Probably so.

Q. And he was in that position during all the time until he swerved immediately to his left and in your path?

A. He never made no indication of swerving.

Q. And he didn't give you any signal?

A. None whatever.

Q. And he cut at right angles?

A. That's right.

Q. At right angles?

A. That would be left angle.

Q. I mean right angle, 90 degrees? [251]

A. That's right.

Q. He cut at an angle of 90 degrees as he went in front of you?

A. That would be right, 75, 90 degrees.

Q. It is your testimony further that at the time you struck him you were not entirely off the pavement, or were you off the pavement?

A. I said the front wheels were off the pavement.

Q. Were the rear wheels off the pavement?

A. They could have been; I couldn't say. I'm talking about the front wheels.

Q. Mr. Bach——

Mr. Carlton: Let me see the pictures, please, ma'am.

(Testimony of Cody Bach.)

Q. Mr. Bach, I hand you Defendant's Exhibit C and I will ask you to state whether or not that is a correct picture of the position in which the Ford was at the time the bus came to a complete and final stop (indicating)? A. That is.

Q. Does that show that the Ford was all clear across the bus, or that it was partially in front of the bus?

Mr. Baker: We object; that is purely argumentative. The picture speaks for itself. [252]

The Court: The objection is well taken.

Q. Then, it is your testimony that that correctly represents the position of the Ford?

A. That's right.

Q. And the bus at the time it came to a complete and final stop? A. That's right.

The Court: What exhibit was it you showed him?

Mr. Carlton: "C".

The Court: "C"?

Mr. Carlton: "C", your Honor.

Q. Did you get the names of all the drivers of the bus?

Mr. Baker: "Drivers" of the bus?

Q. I mean the passengers of the bus.

A. That is the first thing required.

Q. Did you get it? A. Yes, sir.

Q. You did it yourself?

A. Maybe not myself; I had Miss Tuck. She was a great help to me.

The Court: What was that?

The Witness: Mrs. Tuck was a great help to me, your Honor.

(Testimony of Cody Bach.)

Q. Does your company issue a book of manuals for drivers, manuals for showing the rules and regulations, Book No. 1? [253]

A. Yes, they have manuals for everything.

Q. Is this one of your company's manuals (indicating)? A. That's right.

Mr. Carlton: I would like to offer this as an exhibit (indicating).

Mr. Baker: Let me see it. Well, we will object to it on several grounds: one, it was not shown that it was a manual at the time of the accident. The one he shows is one effective January, 1937, and I think it is wholly immaterial and irrelevant. I don't see where there is any materiality at all, a great big book like that, in the issues of this case. You didn't intend to read the whole thing to the jury?

Mr. Carlton: Yes.

The Court: You object to it?

Mr. Baker: I object to it.

The Court: Is there parts of that manual that you want to introduce?

Mr. Carlton: Section 146.

The Court: Did you show it to counsel?

Mr. Baker: Well, what are you going to offer; Section 146?

Mr. Carlton: Yes. [254]

Mr. Baker: I object to that on the same grounds: no showing that was in effect at the time of the accident, and I object on the grounds it is irrelevant and immaterial to the issues in this case whether he gets the names of the witnesses or not. It is just an ordinary rule all the companies have to report an

(Testimony of Cody Bach.)

accident and to get the names and addresses of passengers. What has this to do with this case?

The Court: You have made your objection.

Mr. Baker: How's that?

The Court: You have made your objection.

Mr. Baker: Yes, sir.

The Court: I can't see any relevancy to it; objection sustained.

Mr. Carlton: Take the witness.

Mr. Hall: No questions. Yes, I do have one question.

Cross-Examination

By Mr. Hall:

Q. Mr. Bach, are you now employed by the Pacific Greyhound Lines? A. Yes.

Q. And you are here in Tucson in the employ of the Tucson Greyhound? A. Yes.

Mr. Hall: That is all. [255]

Mr. Fowler: Just a minute.

Q. How long had you worked for Greyhound before the time of the accident?

A. 1940, '41. You see, I went into service the latter part of '42.

Q. Did you drive a bus before you went into the service?

A. Not a big bus like this; a school bus, and trucks and that is the only thing.

Q. When did you start to work for Greyhound?

A. 1940.

Mr. Hall: That is all.

Mr. Baker: That is all, Mr. Bach. The defendant rests.

Thereupon the defendant rested.

Mr. Baker: Any rebuttal?

Mr. Fowler: We rest, if the Court please.

Mr. Hall: No rebuttal.

Mr. Fowler: No rebuttal.

Thereupon the plaintiffs rested.

Thereupon the defendant rested.

The Court: I guess this would be a good time for a short recess and then you will be ready to begin your arguments.

Mr. Fowler: Yes, your Honor. [256]

The Court: Gentlemen of the jury, we are about to take a recess and again you are admonished not to discuss the case amongst yourselves or allow anybody to discuss this case with you, and furthermore you are not to express any opinion until the case has been finally submitted to you for your decision. We will recess for ten minutes.

(Recess had.)

(In the Court's chambers.)

Mr. Carlton: I would like to substitute No. 7 for No. 3, but they are of the opinion it would properly cover it, but I would like for it to be substituted.

Mr. Baker: This one (indicating)?

Mr. Carlton: Yes.

Mr. Baker: I will object to this one. I will except to that one.

The Court: Which one is that?

Mr. Hall: We will leave it as it is.

Mr. Fowler: And let that remain as withdrawn.

It is No. 7, I think, and let it remain as withdrawn.

The Court: Withdrawn. You are satisfied with these instructions on the question of the speed law of New Mexico as incorporated in these two instructions, No. 3 and No. 6; is that correct? [257]

Mr. Hall: Yes, and we pass those instructions.

The Court: All right, you might look over those, Mr. Baker. I haven't arranged those in the order in which they will be read.

Mr. Baker: Okay. The record may show that I have no exceptions to the proposed instructions of the Court.

Mr. Hall: And for Mrs. Rhodes, I state exactly the same thing.

Mr. Fowler: And the same thing for Mr. Rumeh.

Mr. Baker: Now, if the Court please, at the close of all the testimony for both the plaintiffs and the defendant, the defendant renews its motion for an instructed verdict and again moves the Court to direct a verdict in favor of the defendant in each of the cases, upon the grounds and for the reasons stated at the time of the motion made at the close of the plaintiffs' case, and may it be stipulated that all objections and arguments will be deemed renewed at this time.

Mr. Hall: Yes, we so stipulate.

Mr. Fowler: We so stipulate.

Mr. Fowler: And may it also be stipulated that his motion is deemed made in open court?

Mr. Hall: We so stipulate.

Mr. Fowler: We so stipulate. [258]

The Court: The motion is denied. Now, we will go back into the courtroom.

(In the presence of the jury.)

The Court: Is it stipulated that all the jurors are present?

Mr. Fowler: Yes, they are.

The Court: Are you ready to proceed with the argument?

Mr. Hall: There is just one matter, if the Court please, I would like to state in the presence of the jury that the plaintiff, Mrs. Rhodes, had made a motion to amend the Prayer of her Complaint, and that the amendment has been granted by the Court. The Prayer has been amended as follows: "Whereby plaintiff demands judgment against the defendant in the sum of \$25,050, and for her costs incurred herein."

(Thereupon counsel for the respective parties made their arguments to the jury.)

The Court: Well, gentlemen of the jury, the case has not yet been completed. I thought we will take a recess until tomorrow morning at which time the Court will give you your instructions. So again I admonish you not to discuss this case amongst yourselves or with anyone else nor to permit anyone else to discuss this case with you in your presence [259] or hearing. Furthermore, you are not to form or express any opinion as to the merits of this case until the case has been finally submitted to you for your deliberation. You are recessed until tomorrow morning at 9:30. Please be in your seats at that time.

(Thereupon Court adjourned at 5:30 o'clock, p.m., Wednesday, November 3, 1948, and reconvened at 9:30 o'clock, a.m., Thursday, November 4, 1948.)

Thursday, November 4, 1948, 9:30 o'Clock, a.m.

The Court: Is it stipulated that all the jurors are present?

Mr. Baker: Yes, your Honor.

Mr. Fowler: Yes, your Honor.

The Court: Gentlemen, there is nothing to bring up before these instructions are given?

Mr. Baker: No, your Honor.

Mr. Hall: We have nothing further.

The Court: The case is closed as far as the evidence and the arguments are concerned. [260]

COURT'S INSTRUCTIONS

Weinberger, J.: Gentlemen of the Jury: It becomes my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

The jury must accept the instructions of the Court as comprising together a complete and correct statement of the law governing the case. You must not assume the existence of any law not stated in these instructions, nor speculate or guess as to what the law is. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

If during your deliberations, doubt should arise in your minds concerning the law upon any given question, you should so advise the Court, and the Court will then again read the instructions covering the questions as to which you may be in doubt.

This case presents several questions or propositions of law, and it is the duty of the Court to instruct you fully upon each proposition. Some propositions may be covered by only one instruction, while others may require several instructions. You must not allow yourselves to be influenced as to any question of law or fact by the number of instructions given you upon each question. The Court does not intend to stress the relative importance of any question of fact or law either by the number of instructions given you upon a particular proposition or by the order in which all of the instructions are given. You are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions, and as a whole, and to regard each in the light of all the others.

You must decide this case solely upon the evidence that has been received by the Court, and in accordance with the law as I state it to you.

If during this trial I have said or done anything which has suggested to you that I am inclined to favor the claims or positions of either party, [262] or any of the parties, you will not suffer yourself to be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as

to which witnesses are, or are not, worthy of belief; or what inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

At times throughout the trial the Court has been called upon to pass upon the question whether certain offered evidence might properly be admitted. You are not to be concerned with the reasons for such rulings as are not to draw any inference from them. Whether offered evidence is admissible is purely a question of law. In admitting evidence to which any objection is made, the court does not determine what weight should be given such evidence; nor does it pass on the credibility of the witness. As to any offer of evidence that has been rejected by the Court, you, of course must not consider the same; as to any question to which any objection was sustained, you must not conjecture as to what the answer might have been or as to the reason for the objection.

You must not consider for any purpose any evidence which has been ordered stricken out by the Court; such matter is to be treated as though you had never known of it.

During the course of the trial, I have asked questions of certain witnesses. My object was to bring out in greater detail facts not then fully covered in the testimony. You are not to assume that I hold any opinion as to the matters to which the questions related.

You are not to draw any inferences from any

discussion by Court with counsel or from any statements or comments by the Court in connection with rulings upon objections to testimony. In making any such rulings by the Court, or by any comment by the Court in connection with any such rulings, the Court did not intend to express any opinion as to the facts of the case, or what your decision should be on the facts.

If any counsel has intimated by any question that certain hinted facts were, or were not, true, you must disregard any such intimation, and must not draw any inference therefrom; you must not consider as evidence any statement of counsel made in your presence, unless such statement was made as an admission or stipulation.

You are the exclusive judges of the facts and of the effect and value of the evidence, but you [264] must determine the facts from the evidence produced here in court.

A stipulation by and between counsel for the parties as to any facts is binding upon you, and those facts shall be deemed by you as true in all respects, and you are to rely thereon and are bound thereby insofar as those particular facts are concerned.

You are the sole judges of the credibility of the witnesses and the weight which is to be given to their testimony. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies; by the character of his testimony, or by evidence affecting his reputation for truth, honesty and integrity or

his motives; or by contradictory evidence. In judging the credibility of the witnesses in this case, you may believe the whole or any part of the evidence of any witness, or may disbelieve the whole or any part of it, as may be dictated by your judgment as reasonable persons.

You should carefully scrutinize the testimony given, and in so doing consider all of the circumstances under which any witness has testified, his demeanor, his manner while on the stand, his intelligence, the relations which he bears to a plaintiff or a [265] defendant, the manner in which he might be affected by the verdict and the extent to which he is contradicted or corroborated by other evidence, if at all, and every matter that tends reasonably to shed light upon his credibility.

A witness may be impeached by evidence that at other times he has made statements inconsistent with his present testimony as to any matter material to the cause on trial.

A witness wilfully false in one material part of his testimony is to be distrusted in others. The jury may reject the whole of the testimony of a witness who has wilfully sworn falsely as to a material point; if you are convinced that a witness has stated what was untrue as to a material point, not as a result of mistake or inadvertence, but wilfully and with the design to deceive, then you may treat all of his or her testimony with distrust and suspicion, and reject all unless you shall be convinced that he or she has in other particulars sworn to the truth.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary, if from the whole case, considering [266] the credibility of witnesses and after weighing the various factors of evidence, you should believe that there is a balance of probability pointing to the accuracy and honesty of the one witness.

You are not bound to decide in conformity with the testimony of a number of witnesses, which does not produce conviction in your mind, as against the declarations of a lesser number or a presumption or other evidence, which appeals to your mind with more convincing force. This rule of law does not mean that you are at liberty to disregard the testimony of the greater number of witnesses merely from caprice or prejudice, or from a desire to favor one side as against the other. It does mean that you are not to decide an issue by the simple process of counting the number of witnesses who have testified on the opposing sides. It means that the final test is not in the relative number of witnesses, but in the relative convincing force of evidence.

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study and experience has become an expert in any art, science or profession, and who is called as a witness, may give his opinion as to any such matter in

which he is versed and which is material to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment the reasons given for it are unsound.

The plaintiffs, George Rumeh and Bertha Lucille Rhodes, originally brought separate actions against the defendant, Pacific Greyhound Lines, but as their causes of action arose from the same accident and the defendants in the suits are identical, the suits have been consolidated for trial.

The plaintiffs, in their complaints, allege in substance that the defendant was at all times mentioned in the complaints and now is a common motor carrier of passengers, operating in the States of Arizona, New Mexico and other states; they further allege that they, the plaintiffs, were, on the 25th day of March, 1946, paid passengers on a bus of the defendant, Pacific Greyhound Lines, which was then and there being operated and driven by an employee and agent of said defendant; that while said bus of the defendant was being driven and operated along a public highway in the vicinity of Las Cruces, Dona Ana County, State of New Mexico, the driver of defendant's bus so negligently and carelessly drove and operated the same that he caused the bus to collide with another motor vehicle upon the highway and that by reason thereof the accident described in the complaints occurred

resulting in the injuries and damages to the plaintiffs complained of in the complaints.

The defendant, in its answers, admits that it was a common carrier of passengers as alleged in the complaints and that it was operating the bus in question by and through an agent and employee, and that the plaintiffs were paid passengers upon said bus and that on or about March 25, 1946, while said bus was proceeding along a public highway in the vicinity of Las Cruces, New Mexico, there was an accident in which another motor vehicle proceeding in the opposite direction along said highway collided with said bus, but defendant denies that the driver of its bus or the defendant was negligent in any respect, and denies that plaintiffs, or either or them, was injured or damaged by reason of any act on the part of the defendant or its driver, and denies that any act upon the part of the defendant or its driver was the proximate cause of plaintiffs' [269] injuries and damages, if any there are, and denies that plaintiffs were injured or damaged as claimed in the complaints.

You are instructed that the burden is upon the plaintiffs not only to prove that the defendant was negligent as charged in the complaints, but further, the burden is upon the plaintiffs to prove that such negligence, if any, was the proximate cause of plaintiffs' injuries, if any. That is, even if you find that the plaintiffs were injured by reason of an accident occurring while they were passengers upon the bus of the defendant, Pacific

Greyhound Lines, yet, that is not sufficient to entitle plaintiffs to recover unless they go further and prove by a preponderance of the evidence that they were injured by reason of some act of negligence upon the part of said defendant as charged in the complaints, and if plaintiffs' injuries were due to some other cause, such as the act of a third person other than the defendant, or some unaccountable cause, and was not due to a negligent act of the defendant, then the plaintiffs cannot recover and your verdict should be for the defendant.

If, however, you find by a preponderance of the evidence that the defendant's driver was negligent and that such negligence was a proximate cause of the accident and the resulting injuries of the plaintiffs, you must find for the plaintiffs, even though you find from the evidence that the driver of the Ford car may have been guilty of negligence and that his negligence contributed to the accident and resultant injuries of plaintiffs.

The term "preponderance of the evidence" means such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability of truth lies therein.

You are instructed that negligence is never presumed and it is the duty of any party claiming negligence to establish that fact by a preponderance of the evidence, and in this case the lone fact that plaintiffs were injured while passengers upon a bus of the defendant is not sufficient to justify you infinding that defendant is liable for the in-

juries unless you further find from a preponderance of the evidence that such injuries were proximately caused by some negligent act of the defendant as charged in the complaints.

You are instructed that the defendant is not liable for an unavoidable accident. In this case even though the plaintiffs were injured without a fault on their part, yet a verdict cannot be rendered against the defendant unless the jury find from a [271] preponderance of the evidence that the injuries to plaintiffs were by reason of negligence on the part of the defendant as charged in the complaints. If the injury to plaintiffs was by reason of an unavoidable accident beyond defendant's control, then there was no negligence and your verdict must be for the defendant.

You are instructed that the defendant is not liable for injuries caused by a third person not an employee or servant of the defendant. Therefore, you are instructed that even if you find that plaintiffs were injured as charged in the complaints, but you further find that such injuries were solely due to the act of some third person not a servant or employee of the defendant, or were caused by a negligent act for which defendant is not responsible, then the defendant is not liable for plaintiffs' injuries, if any, and you shall return a verdict for the defendant.

You are instructed that a common carrier is not the insurer of the safety of passengers while being transported, and unless the carrier is guilty

of negligence which was the proximate cause of the injury received, it is not liable. [272]

All that is required of a common carrier is that it exercises the highest degree of care which a reasonably prudent and careful person would, under like and similar circumstances, exercise, to carry passengers safely. If this defendant did exercise such care then it is not liable although an accident happened and plaintiffs were injured.

A common carrier is not the insurer of the safety of passengers, while being transported and unless the carrier is guilty of negligence which was the proximate cause of the injury received, it is not liable.

All that is required of a common carrier is that—I think that is repetition. That is the same one. I am sorry, that is a repetition of the instruction I have just read, which was retyped, and everything I have already stated is already in No. 15. I had them together for the purpose of comparison.

Mr. Baker: That is all right.

Mr. Hall: That is all right.

The Court: I am sorry I read that. It was a copy of the charge I had already read to you.

You are instructed that while the law is very strict and stringent as to the duties it imposes upon common carriers for the safety of passengers, yet there is no absolute warrant of safety imposed. There are certain risks and dangers to which passengers are necessarily exposed for which a carrier is not and ought not to be liable. These are the perils against which human sagacity cannot

provide or the utmost care prevent. Every passenger must and does assume the risks incident to the mode of travel he selects and which cannot be avoided or prevented by the utmost skill on the part of the carrier.

You are instructed that a person faced with a sudden emergency, which emergency was not caused by him, is not expected to use and exercise the same calm and cool judgment which a person should exercise when not faced with such emergency, and in this case if you find from the evidence that the driver of the motor bus of the defendant, Pacific Greyhound Lines, was faced by a sudden emergency, which was not caused by his act, he is only called upon to exercise the highest degree of care which a reasonably prudent and careful man would exercise under the same circumstances; that is, a reasonably prudent and careful man who was faced with the same sudden emergency as the driver of this motor bus, if you find there was any such emergency.

You are instructed that negligence is the doing of some act which a reasonably prudent person would not do, or the failure to do something which a [274] reasonably prudent person would do, actuated by those considerations which ordinarily regulate the conduct of human affairs. It is the failure to use ordinary care in the management of one's property or person.

You are instructed that the proximate cause of an injury is that cause which, in natural and continuous sequence, unbroken by any efficient inter-

vening cause, produces the injury, and without which the result would not have occurred. It is the efficient cause—the one that necessarily sets in operation the factors that accomplish the injury. It may operate directly or through intermediate agencies or through conditions created by such agencies.

The law does not permit you to guess or speculate as to the cause of the accident in question. If the evidence is equally balanced on the issue of negligence or proximate cause, so that it does not preponderate in favor of the parties making the charge, then they have failed to fulfill their burden of proof. To put the matter in another way, if after considering all the evidence, you should find that it is just as probable that either the defendant was not negligent or, if it was, its negligence [275] was not a proximate cause of the accident, as it is that some negligence on its part was such a cause, then a case against the defendant has not been established.

The defendant Pacific Greyhound Lines is a corporation and as such can act only through its officers and employees, who are its agent. The acts and omissions of an agent, done within the scope of his authority, are, in contemplation of law, the acts and omissions respectively of the corporation whose agent he is.

You, Gentlemen of the Jury, are instructed that if you find that the plaintiff, George Rumeh, suffers from some unfortunate condition, which has not been proximately caused by negligence on defendant's part, although inviting your sympathy, you may not assess any damages for that condition.

However, if negligence on defendant's part has been a proximate cause of aggravating a previously existing disability suffered by said plaintiff, that effect should be considered by you in fixing damages, if your decision on the question of liability requires you to fix damages.

You, Gentlemen of the Jury, are instructed that if you find from the preponderance of the evidence that the plaintiffs, or either of them, were injured through the negligence of the defendant and that such [276] negligence was the proximate cause of plaintiffs' said injuries, it shall then be your duty to fix the amount of the damages, if any, to be awarded to said plaintiffs, or either of them.

There is no fixed or definite rule that can be given you with reference to the amount of damages to be awarded to a plaintiff in a suit for injuries to the person. It rests in the sound judgment and fairness of the Jury to determine what amount will fairly compensate said plaintiff for the personal injuries sustained, if any. No damages can be given by way of punishment, but only damages that will fairly compensate the plaintiff for the injuries sustained, if any, which amount must be determined by you after considering all of the evidence in the case. In estimating such damages you are to consider the health and condition of the plaintiff before the injuries complained of as compared with such plaintiff's present condition in consequence of said injuries, also the physical and the mental suffering to which such plaintiff may have been subjected or will be subjected in the future by reason of such

injuries, if any, together with the expenses of services of physicians, surgeons, hospitals and medicines, if any, to which such [277] plaintiff may have been subjected or will be subjected in the future as a result of such injuries, and any damages allowed by you must not exceed the amount claimed in the complaints on file herein.

You are instructed that the law in New Mexico, where the accident occurred, is as follows:

“The driver or operator of any vehicle in or upon public highways within this State, shall drive or operate such vehicle in a careful manner with due regard for the safety and convenience of all vehicles or traffic upon such highways.”

You, Gentlemen of the Jury, are instructed that the speed at which a vehicle travels on a highway considered as an isolated fact and simply in terms of so many miles an hour, is not proof either of the negligence or of the exercise of ordinary care. Whether that rate of speed is a negligent one is a question of fact, the answer to which depends on all of the surrounding circumstances in the case. You are instructed in this connection, that the speed law of New Mexico at the time of the accident was forty-five (45) miles per hour.

In some of these instructions I may have used the masculine term “him” or “he” when speaking of a witness or litigant. In this connection you are to [278] consider the instructions as applying to all witnesses, or litigants, and to the feminine as well as the masculine, unless a particular witness or litigant is mentioned by name.

According to the American Experience Table of Mortality, the expectancy of life of a person aged 45 years is 24.54 years; and the expectancy of life of a person 42 years is 26.72 years.

This fact, on which the Court takes judicial notice, is now in evidence to be considered by you in arriving at the amount of damages, if you find that each or either of the plaintiffs, Bertha Lucille Rhodes, and George Rumeh, are entitled to a verdict.

However, the restricted significance of this evidence should be noted. Life expectancy shown by the mortality tables is merely an estimate of the probable average remaining length of life of all persons in our country of a given age, and that estimate is based on not a complete but only a limited record of experience. Therefore, the inference that may be drawn from the tables applies only to one who has the average health and exposure to danger of people of that age. Thus, in connection with this evidence, you should consider all other [279] evidence bearing on the same issue, such as that pertaining to the occupation, health, habits and activity of the person whose life expectancy is in question.

It is your duty to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be in-

fluenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

The attitude and conduct of jurors at the outset of their deliberations are a matter of considerable importance. It is rarely productive of good for a juror, upon entering the jury room, to make an emphatic expression of his opinion on the case or to announce a determination to stand for a certain [280] verdict. When one does that at the outset, his sense of pride may be aroused, and he may hesitate to recede from an announced position if shown that it is fallacious. Remember that you are not partisans or advocates in this matter, but are judges. The final test of the quality of your service will lie in the verdict which you return to the Court, not in the opinions any of you may hold as you retire. Have in mind that you will make a definite contribution to efficient judicial administration if you arrive at a just and proper verdict in this case. To that end, the Court would remind you that in your deliberations in the jury room there can be no triumph excepting the ascertainment and declaration of the truth.

In order to return a verdict, or verdicts, it is necessary that each juror agree thereto. Your verdict or verdicts must be unanimous as to each litigant.

The fact that you will be given several forms of verdicts is not to be taken by you to indicate that the Court has any opinion that there is evidence to support any one particular verdict.

When you retire to your jury room to deliberate, you will select one of your number as foreman, who will represent you as your spokesman in the further conduct of this case in this court. If it becomes [281] necessary during your deliberations to communicate with the Court, do not indicate in any manner how the jury stands, numerically or otherwise.

When you have agreed upon your verdict or verdicts, the same will be signed by your foreman and you will also date the verdict, and you will return with such verdict or verdicts into court.

The forms of verdict that have been prepared are as follows—there are 1, 2, 3, 4 forms. In the case of George Rumeh against the Pacific Greyhound Lines, a corporation, “We the Jury duly impaneled and sworn in the above-entitled action, upon our oaths do find for the plaintiff George Rumeh and assess his damages at blank dollars, blank form.” In the same case, the other form of verdict is as follows: “We the Jury duly impaneled and sworn in the above-entitled action, upon our oaths do find for the defendant.” In the case of Bertha Lucille Rhodes against the Pacific Greyhound Lines, a corporation, one form is as follows: “We the Jury duly impaneled and sworn in the above-entitled action, upon our oaths do find for the plaintiff Bertha Lucille Rhodes and assess her damages at blank dollars.” The other form reads as follows: “We, the

Jury, duly impaneled and sworn in the above-entitled action, upon our oaths [282] do find for the defendant."

The Court: Will counsel step forward, please.

(Thereupon Court and counsel conferred as follows):

The Court: Are there any objections to any instructions or are there any demands?

Mr. Hall: Not to my knowledge.

Mr. Baker: The defendant has no exception.

Mr. Fowler: We have none.

The Court: You are satisfied.

Mr. Fowler: Did you say whether the Jury may have the exhibits, x-rays, and so forth? Do you wish to tell them that?

The Court: If they may wish to.

(Addressing the Jury.)

I will advise the Jury that if you desire the exhibits in the jury room, they will be delivered to you.

Now, the alternate juror, Mr. Adamson,—there will be no further need for your further services in this case and you are now discharged from further service in this case.

Mr. Adamson: That means that I can leave town?

The Court: You can leave now.

Mr. Adamson: I will be notified when to come again? [283]

The Court: You will be notified when you shall serve again.

The officers will take charge of the Jury and they will be sworn.

The Clerk: The bailiff has been sworn.

The Court: The bailiff has been sworn?

The Clerk: Yes, sir.

The Court: You are now to retire and deliberate.

CERTIFICATE

State of Arizona,
County of Pima—ss.

I, Alex E. Weiss, do hereby certify that I was duly sworn as official Court Reporter in the United States District Court, District of Arizona, and that as such official Court Reporter I attended the trial in the foregoing entitled causes; that while there I took down in shorthand all the oral testimony adduced, and proceedings had; that I have transcribed such shorthand into typewriting, and that the foregoing typewritten matter contains a full, true and correct transcript of my shorthand notes so taken by me as aforesaid.

/s/ ALEX E. WEISS,
Official Court Reporter.

[Endorsed]: Filed April 1, 1949. [285]

[Endorsed]: No. 12237. United States Court of Appeals for the Ninth Circuit. Pacific Greyhound Lines, a corporation, Appellant, vs. George Rumeh, Appellee. Pacific Greyhound Lines, a corporation, Appellant, vs. Bertha Lucille Rhodes, Appellee. Transcript of Record. Appeals from the United States District Court for the District of Arizona.

Filed May 9, 1949.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12237

PACIFIC GREYHOUND LINES, a corporation,
Appellant,
vs.

GEORGE RUMEH,
Appellee.

Consolidated
PACIFIC GREYHOUND LINES, a corporation,
Appellant,
vs.

BERTHA LUCILLE RHODES,
Appellee.

CONCISE STATEMENT BY APPELLANT OF
POINTS UPON WHICH IT INTENDS
TO RELY UPON APPEAL

Now Comes Pacific Greyhound Lines, a corporation, appellant above named, by its attorneys, and in accordance with Subdivision 6 of Rule 19 of the Rules of this Court, hereby states that upon its appeal it intends to rely upon the following points:

1. That the trial court erred in denying defendant's Motion for Continuance of Trial for the reason that the testimony of an absent witness was material to the defense of the above causes, and the defendant was prejudiced by the refusal of the court to grant time to procure the presence of such witness.

2. That the court erred in denying defendant's Motion for Instructed Verdict in each of above cases made at the close of plaintiffs' evidence, for the reason that plaintiffs' evidence was not sufficient to sustain or establish a cause of action or legal claim against the defendant.

3. That the court erred in denying defendant's Motion for Instructed Verdict in each of above cases made at the close of all the evidence, for the reason that the evidence was not sufficient to sustain or establish a cause of action or legal claim against the defendant.

4. That the evidence is insufficient to support the verdicts or judgments rendered and entered in the above causes, and the said verdicts and judgments are not justified by the evidence and are contrary to the evidence and the law.

5. That the court erred in denying defendant's Motion for Judgment for Defendant Notwithstanding the Verdict and for Judgment in Accordance with Motion for Directed Verdict made in each of the above causes, for the reasons set forth in said Motions and for the reasons set forth in Paragraphs 2, 3 and 4 hereof.

6. That the court erred in refusing to render and enter judgment for the defendant in each of the above causes in accordance with Motion for Directed Verdict made in each of said causes at the close of all the evidence, for the reasons assigned in Paragraphs 2, 3, 4 and 5 hereof.

7. That the damages awarded the plaintiff in each of the above causes in the verdict of the jury

rendered in each of said causes are excessive and appear to have been given under the influence of passion or prejudice.

8. That the court erred in denying defendant's Alternative Motion for New Trial made in each of the above causes, for the reasons set forth in said Motions and for the reasons set forth in Paragraphs 2, 3, 4, 5, 6 and 7 hereof.

Dated at Phoenix, Arizona, this 7th day of May, 1949.

BAKER & WHITNEY,

By /s/ ALEXANDER B. BAKER,
Attorneys for Appellant.

[Endorsed]: Filed May 9, 1949. Paul P. O'Brien,
Clerk.